UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT
Filed October 16, 2019, 12:00 a.m. through November 01, 2019, 11:59 p.m.

Number 2019-22
November 15, 2019

Nancy L. Lancaster, Managing Editor

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

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

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

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

Office of Administrative Rules, Salt Lake City 84114

Utah state bulletin.
Semimonthly.
1. Delegated legislation--Utah--Periodicals. 2. Administrative procedure--Utah--Periodicals.
I. Utah. Office of Administrative Rules.

KFU440.A73S7
348.792'025--DDC 85-643197

TABLE OF CONTENTS

SPECIAL NOTICES

Health
Health Care Financing, Coverage and Reimbursement Policy

Notice for December 2019 Medicaid Rate Changes

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

End of the Special Notices Section

NOTICES OF
PROPOSED RULES

A state agency may file a **Proposed Rule** when it determines the need for a substantive change to an existing rule. With a **Notice of Proposed Rule**, an agency may create a new rule, amend an existing rule, repeal an existing rule, or repeal an existing rule and reenact a new rule. Filings received between October 16, 2019, 12:00 a.m., and November 01, 2019, 11:59 p.m. are included in this, the November 15, 2019, issue of the *Utah State Bulletin*.

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

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

The law requires that an agency accept public comment on **Proposed Rules** published in this issue of the *Utah State Bulletin* until at least December 16, 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 March 14, 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** or a **Change in Proposed Rule**, the **Proposed Rule** lapses.

The public, interest groups, and governmental agencies are invited to review and comment on **Proposed Rules**. *Comment may be directed to the contact person identified on the* **Rule Analysis** *for each rule.*

Proposed Rules are governed by Section 63G-3-301, Rule R15-2, and Sections R15-4-3, R15-4-4, R15-4-5a, R15-4-9, and R15-4-10.

The Proposed Rules Begin on the Following Page

Administrative Services, Administration
R13-10
State Entities' Posting of Financial Information to the Utah Public Finance Website

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 44187
FILED: 11/01/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: During the 2019 General Session, the Legislature passed H.B. 178. This bill transferred responsibility for the Transparency Advisory Board from the Division of Finance to the Department of Administrative Services. The purpose of this rule is to establish requirements for the posting of financial information for participating state entities on the Utah Public Finance Website as required by Section 63A-1-204.

SUMMARY OF THE RULE OR CHANGE: Rule R13-10 provides definitions, the definition of public financial information as required by statute, and procedures for submitting data to the Utah Public Finance Website.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63A-1-204

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There is no anticipated cost or savings to the state budget. The provisions of this rule are substantially similar to the rule (Rule R25-10) that existed under the former statutory authorization. The processes for submitting data already exist.
♦ LOCAL GOVERNMENTS: There is no anticipated cost or savings to local governments. This rule applies to participating state entities only.
♦ SMALL BUSINESSES: There is no anticipated cost or savings to small businesses. This rule applies to participating state entities only.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This rule applies to participating state entities only. There is no anticipated cost or savings to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule reestablishes the provisions currently found in Rule R25-10 under Title R13 pursuant to Section 63A-1-204. It only affects state agencies. It does not impose compliance costs on persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed and approved this rule. There will not be an impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ADMINISTRATIVE SERVICES
ADMINISTRATION
ROOM 3120 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Kenneth Hansen by phone at 801-538-3010, or by Internet E-mail at khansen@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/16/2019

THIS RULE MAY BECOME EFFECTIVE ON: 12/23/2019

AUTHORIZED BY: Tani Downing, Executive Director

Appendix 1: Regulatory Impact Summary Table*

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

Other Persons	$0	$0	$0
Total Fiscal Benefits:	**$0**	**$0**	**$0**
Net Fiscal Benefits:	**$0**	**$0**	**$0**

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

Appendix 2: Regulatory Impact to Non-Small Businesses
This proposed rule is not expected to have any fiscal impacts on non-small businesses' revenues or expenditures, because this rule only applies to participating state entities.

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

R13. Administrative Services, Administration.
R13-10. State Entities' Posting of Financial Information to the Utah Public Finance Website.
R13-10-1. Purpose.
The purpose of this rule is to establish procedures related to the posting of the participating state entities' financial information to the Utah Public Finance Website (UPFW).

R13-10-2. Authority.
This rule is established pursuant to Section 63A-1-204, which authorizes the Department of Administrative Services to make rules governing the posting of financial information for participating state entities on the UPFW after consultation with the Utah Transparency Advisory Board.

R13-10-3. Definitions.
(1) Terms used in this rule are defined in Section 63G-1-201.
(2) Additional terms are defined as follows:
(a) "Utah Public Finance Website" (UPFW) or "Transparent Utah" means the website created in Section 63A-1-202 which is administered by the Office of the State Auditor and which permits Utah taxpayers to view, understand, and track the use of taxpayer dollars by making public financial information available on the internet without paying a fee.
(2) "Division" means the Division of Finance of the Department of Administrative Services.
(3) "FINET" means the State of Utah centralized accounting system.
(4) "Institution" means an institution of higher education such as colleges, universities, and the Utah System of Technical Colleges, including all component units of these entities as defined by the Governmental Accounting Standards Board (GASB).
(4) "Office" means the Office of the State Auditor.

R13-10-4. Public Financial Information.
(1) Each participating state entity shall submit detail revenue and expense transactions from its general ledger accounting system to the UPFW at least quarterly and within one month after the end of the fiscal quarter. The Division shall submit the detail transactions for all participating state entities that are recorded in the central general ledger of the State, FINET.
(2) Each participating state entity shall submit employee compensation detail information on a basis consistent with its fiscal year to the UPFW at least once per year and within three months after the end of the fiscal year. The Division shall submit the employee compensation detail information that is recorded in the central payroll system of the State that is operated by the Division.
(a) Employee compensation detail information will, at a minimum, break out the following amounts separately for each employee:
(i) total wages or salary;
(ii) total benefits, benefit detail that is protected by Subsection 63G-2-302(1)(g) may not be disaggregated;
(iii) incentive awards;
(iv) taxable allowances and reimbursements; and
(v) leave paid, if recorded separately from wages or salary in the participating state entity's payroll system.
(b) In addition, the following information will be submitted for each employee:
(i) name;
(ii) hourly rate for those employees paid on an hourly basis; and
(iii) job title
(3) An entity may not submit any data to the UPFW that is classified as private, protected, or controlled by Sections 63G-2-302, 63G-2-303, 63G-2-304, and 63G-2-305 or any other statute. All detail transactions or records are required to be submitted; however, the words "redacted" or "not provided" shall be inserted into any applicable data field in lieu of private, protected, or controlled information.

R13-10-5. UPFW Data Submission Procedures.
(1) Each entity must submit data to the UPFW according to the file specifications listed below.
(a) The public financial information required in Section R13-10-4 shall be submitted to the UPFW in a pipe delimited text file. The detail file layout is available from the Office and is posted on the UPFW under the Helps and FAQs tab.
(b) Data shall be submitted to the UPFW at the detail transaction level. However, the detailed transactions for compensation information for each employee may be summarized into transactions that represent an entire fiscal year.
(c) Each transaction submitted to the website must contain the information required in the detail file layout including:
(i) Organization - Categorizes transactions within the entity's organization structure. If applicable, at least two levels of organization will be submitted but not more than 10 levels.
(ii) Category - Categorizes transactions and further describes the transaction type. If applicable, at least two levels of category will be submitted but not more than seven levels.
(iii) Fund - Categorizes transactions by fund types and individuals funds. At least one but not more than four levels of fund will be submitted.

KEY: Utah Public Financial Website, transparency, state employees, finance
Date of Enactment or Last Substantive Amendment: 2019
Authorizing, and Implemented or Interpreted Law: 63A-1-204

Administrative Services, Administration
R13-11
Use of Electronic Meetings for the Utah Transparency Advisory Board

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 44188
FILED: 11/01/2019

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: During the 2019 General Session, the Legislature passed H.B. 178. This bill transferred responsibility for the Transparency Advisory Board from the Division of Finance to the Department of Administrative Services. Section 52-4-207 requires any public body that convenes or conducts an electronic meeting to establish written procedures for such meetings. This rule reestablishes procedures for conducting Utah Transparency Advisory Board meetings by electronic means under the Department of Administrative Services.

SUMMARY OF THE RULE OR CHANGE: Rule R13-11 establishes procedures for conducting meetings of the Utah Transparency Advisory Board by electronic means. It permits some members to participate by electronic means, but requires a quorum of the board to physically attend a board meeting, and permits the chair to limit the number of members who participate electronically. It provides for notice that some members of the board may participate by electronic means.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 52-4-207

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There is no anticipated cost or savings to the state budget. The provisions of this rule are substantially similar to the rule (Rule R25-11) that existed under the former statutory authorization. The infrastructure to conduct electronic meetings already exists. Based on experience under the previous rule, any potential cost savings created by allowing state members to participate electronically cannot be predicted, and would be insignificant as most members are required to participate in person.
♦ LOCAL GOVERNMENTS: There is no anticipated cost or savings to local governments. The provisions of this rule are substantially similar to the rule that existed under the former statutory authorization. The infrastructure to participate electronically already exists. Based on experience under the previous rule, any potential cost savings created by allowing local government members to participate electronically cannot be predicted, and would be insignificant as most members participate in person.
♦ SMALL BUSINESSES: This rule does not apply to small businesses. It only applies to members of the Utah Transparency Advisory Committee. Therefore, there is no anticipated cost or savings to small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This rule does not apply to other persons. It only applies to members of the Utah Transparency Advisory Committee. Therefore, there is no anticipated cost or savings to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule affects the method of meeting participation for some members of the Utah Transparency Advisory Board only. It does not impose compliance costs on persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed and approved this rule. There will not be an impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ADMINISTRATIVE SERVICES
ADMINISTRATION
ROOM 3120 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Kenneth Hansen by phone at 801-538-3010, or by Internet E-mail at khansen@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/16/2019

THIS RULE MAY BECOME EFFECTIVE ON: 12/23/2019

AUTHORIZED BY: Tani Downing, Executive Director

Appendix 1: Regulatory Impact Summary Table*

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

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

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

Appendix 2: Regulatory Impact to Non-Small Businesses
This proposed rule is not expected to have any fiscal impact on non-small businesses' revenues or expenditures, because this rule only applies to participating state entities.

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

R13. Administrative Services, Administration.
R13-11. Use of Electronic Meetings for the Utah Transparency Advisory Board.
R13-11-1. Purpose and Authority.
(1) Purpose. Utah Code Section 52-4-207 requires any public body that convenes or conducts an electronic meeting to establish written procedures for such meetings. This rule establishes procedures for conducting Utah Transparency Advisory Board meetings by electronic means.
(2) Authority. This rule is enacted under the authority of Sections 52-4-207, and 63A-1-204.

R13-11-2. Definitions.
Terms used in this rule are defined in Sections 63G-1-201 and 52-4-103.

R13-11-3. Electronic Meetings.
(1) Electronic meetings of the Utah Transparency Advisory Board are governed by Subsection 52-4-207(3).
(2) As permitted by Subsection 52-4-207(2):
(a) A board member may request that a board meeting be conducted as an electronic meeting. The board member must make the request three days prior to the meeting.
(b) The board chair, in response to a request and in consultation with the department, may designate a meeting as an electronic meeting.
(c) When an electronic meeting is held, a quorum of the board must be present at a single anchor location.
(d) The chair may restrict the number of electronic connections for an electronic meeting.
(e) If one or more members of the board may participate in any meeting electronically or telephonically, public notices of the meeting shall so indicate.
(f) The chair shall provide notice of the possibility of an electronic meeting to the board members at least 24 hours before the meeting. In addition, the notice shall describe how a board member may participate in the meeting electronically or telephonically.

KEY: electronic meetings, Utah Transparency Advisory Board
Date of Enactment or Last Substantive Amendment: 2019
Authorizing, and Implemented or Interpreted Law: 52-4-207; 63G-3-201; 63A-1-204

Commerce, Occupational and Professional Licensing
R156-1
General Rule of the Division of Occupational and Professional Licensing

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 44153
FILED: 10/29/2019

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division of Occupational and Professional Licensing (Division) proposes these amendments to clarify and establish the application procedures for a criminal history determination pursuant to new Section 58-1-310 enacted by H.B. 90, passed in the 2019 General Session.

SUMMARY OF THE RULE OR CHANGE: New Section R156-1-310 establishes the application form and clarifies that an individual must submit a separate application for each license type determination. This section also clarifies that a determination will be based solely on the information

contained in the application and supporting documents, that a "complete criminal conviction history" includes pleas in abeyance and nolo contendere and current firearms restrictions, and that an individual whose application has been denied as incomplete or who has received an unfavorable determination may submit a request for agency review. The following nonsubstantive formatting changes are also made in this filing: Sections R156-1-111a and R156-1-111b are merged for clarity, the obsolete license classification "Construction Trades Instructor" is deleted from Section R156-1-308a, and former Section R156-1-310 is renumbered to Section R156-1-501.1.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-1-308 and Subsection 58-1-106(1)(a) and Subsection 58-1-501(2)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The Division expects these proposed amendments to have no impact on the Division or other state agencies over and above the impact described in the fiscal note for H.B. 90 (2019), available online at: https://le.utah.gov/~2019/bills/static/HB0090.html, as this rule merely establishes and clarifies the Division's application procedures in accordance with the mandates of new Section 58-1-310. There will be a minimal cost to the Division of approximately $75 to disseminate this rule once the proposed amendments are made effective.
♦ LOCAL GOVERNMENTS: These proposed rule amendments are not expected to impact local governments as they will not affect local governments' practices or procedures.
♦ SMALL BUSINESSES: These proposed rule amendments will only impact individuals who seek an advance criminal history determination from the Division as authorized by new Section 58-1-310, and are not expected to impact small businesses over and above the impact described in the fiscal note for H.B. 90 (2019), available online at: https://le.utah.gov/~2019/bills/static/HB0090.html.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: These proposed rule amendments will affect an estimated 456 individuals annually who will seek an advance criminal history determination from the Division. Because the rule merely establishes and clarifies procedures in accordance with the mandates of Section 58-1-310, they are not expected to impact these persons over and above the impact described in the fiscal note for H.B. 90 (2019), available online at: https://le.utah.gov/~2019/bills/static/HB0090.html.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Division estimates that these proposed amendments will have no compliance cost on any affected persons over and above that already included in the fiscal note for H.B. 90 (2019), available online at: https://le.utah.gov/~2019/bills/static/HB0090.html.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Division proposes these amendments to clarify and establish the application procedures for a criminal history determination pursuant to new Section 58-1-310 enacted by H.B. 90 (2019). New Section R156-1-310 establishes the application form and clarifies that an individual must submit a separate application for each license type determination. This section also clarifies that a determination will be based solely on the information contained in the application and supporting documents, that a "complete criminal conviction history" includes pleas in abeyance and nolo contendere and current firearms restrictions, and that an individual whose application has been denied as incomplete or who has received an unfavorable determination may submit a request for agency review. Nonsubstantive formatting changes are also made in this filing: Sections R156-1-111a and R156-1-111b are merged for clarity, the obsolete license classification "Construction Trades Instructor" is deleted from Section R156-1-308a, and former Section R156-1-310 is renumbered to Section R156-1-501.1. Small Business (less than 50 employees): These proposed rule amendments will only impact individuals who seek an advance criminal history determination from the Division as authorized by new Section 58-1-310, and there is no expected impact to small businesses over and above the impact described in the fiscal note for H.B. 90 (2019), available online at: https://le.utah.gov/~2019/bills/static/HB0090.html. Non-Small Businesses (50 or more employees): These proposed rule amendments will only impact individuals who seek an advance criminal history determination from the Division as authorized by new Section 58-1-310, and there is no expected impact to non-small businesses over and above the impact described in the fiscal note for H.B. 90 (2019), available online at: https://le.utah.gov/~2019/bills/static/HB0090.html.

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:
♦ Deborah Blackburn by phone at 801-530-6060, by FAX at 801-530-6511, or by Internet E-mail at deborahblackburn@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/16/2019

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 12/03/2019 10:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 474 (fourth floor), Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 12/23/2019

AUTHORIZED BY: Mark Steinagel, Director

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2020	FY 2021	FY 2022
State Government	$75	$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:	**$75**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	60
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits:	**$0**	**$0**	**$0**
Net Fiscal Benefits:	**$(75)**	**$0**	**$0**

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

Appendix 2: Regulatory Impact to Non-Small Businesses
These proposed rule amendments will only impact individuals who seek an advance criminal history determination from the Division as authorized by new Section 58-1-310, and are not expected to impact non-small businesses over and above the impact described in the fiscal note for H.B. 90 (2019), available online at: https://le.utah.gov/~2019/bills/static/HB0090.html.

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

R156. Commerce, Occupational and Professional Licensing.
R156-1. General Rule of the Division of Occupational and Professional Licensing.
R156-1-111[a]. Qualifications for Tax Certificate - Definitions - Application Requirements.

(1) In addition to the definitions in Title 58, Chapter 1, as used in Title 58, Chapter 1, or in this rule:

([~~1~~]a) "Psychiatrist", as defined under Subsection 58-1-111(1)(d, is further defined to include a licensed physician who is board eligible or board certified for a psychiatry specialization recognized by the American Board of Medical Specialties (ABMS) or the American Osteopathic Association's Bureau of Osteopathic Specialists (BOS).

([~~2~~]b) Under Subsection 58-1-111(1)(f)(ii), the definition of a "volunteer retired psychiatrist" is further defined to mean a physician or osteopathic physician licensed under Title 58, Chapter 81, Retired Volunteer Health Practitioner Act, who is previously or currently board certified for a psychiatry specialization recognized by the American Board of Medical Specialties (ABMS) or the American Osteopathic Association's Bureau of Osteopathic Specialists (BOS).[

~~**R156-1-111b. Qualifications for Tax Certificate - Application Requirements.**~~**]**

(2) An applicant for a tax credit certificate under Section 58-1-111 shall provide to the Division:

([~~1~~]a) the original application made available on the Division's website, containing the signed attestation of compliance; and

([~~2~~]b) any additional documentation that may be required by the Division to verify the applicant's representations made in the application.

R156-1-308a. Renewal Dates.

(1) The following standard two-year renewal cycle renewal dates are established by license classification in accordance with the Subsection 58-1-308(1):

TABLE
RENEWAL DATES

Acupuncturist	May 31	even years
Advanced Practice Registered Nurse	January 31	even years
Advanced Practice Registered Nurse-CRNA	January 31	even years
Architect	May 31	even years
Athlete Agent	September 30	even years
Athletic Trainer	May 31	odd years
Audiologist	May 31	odd years
Barber	September 30	odd years
Barber Apprentice	September 30	odd years
Barber School	September 30	odd years
Behavior Analyst and Assistant Behavior Analyst	September 30	even years
Behavior Specialist and Assistant Behavior Specialist	September 30	even years
Building Inspector	November 30	odd years
Burglar Alarm Security	March 31	odd years
C.P.A. Firm	December 31	even years
Certified Court Reporter	May 31	even years
Certified Dietitian	September 30	even years
Certified Medical Language Interpreter	March 31	odd years
Certified Nurse Midwife	January 31	even years
Certified Public Accountant	December 31	even years
Certified Social Worker	September 30	even years
Chiropractic Physician	May 31	even years
Clinical Mental Health Counselor	September 30	even years
Clinical Social Worker	September 30	even years
[~~Construction Trades Instructor~~	~~November 30~~	~~odd years~~]
Contractor	November 30	odd years
Controlled Substance License	Attached to primary license	renewal
Controlled Substance Precursor	May 31	odd years
Controlled Substance Handler	September 30	odd years
Cosmetologist/Barber	September 30	odd years
Cosmetologist/Barber Apprentice	September 30	odd years
Cosmetology/Barber School	September 30	odd years
Deception Detection Deception Detection Examiner, Deception Detection Intern, Deception Detection Administrator	November 30	even years
Dental Hygienist	May 31	even years
Dentist	May 31	even years
Direct-entry Midwife	September 30	odd years
Dispensing Medical Practitioner		

Advanced Practice Registered Nurse, Optometrist, Osteopathic Physician and Surgeon, Physician and Surgeon, Physician Assistant	September 30	odd years
Dispensing Medical Practitioner Clinic Pharmacy	September 30	odd years
Electrician Apprentice, Journeyman, Master, Residential Journeyman, Residential Master	November 30	even years
Electrologist	September 30	odd years
Electrology School	September 30	odd years
Elevator Mechanic	November 30	even years
Environmental Health Scientist	May 31	odd years
Esthetician	September 30	odd years
Esthetician Apprentice	September 30	odd years
Esthetics School	September 30	odd years
Factory Built Housing Dealer	September 30	even years
Funeral Service Director	May 31	even years
Funeral Service Establishment	May 31	even years
Genetic Counselor	September 30	even years
Hair Designer	September 30	odd years
Hair Designer Instructor	September 30	odd years
Hair Designer School	September 30	odd years
Health Facility Administrator	May 31	odd years
Hearing Instrument Specialist	September 30	even years
Internet Facilitator	September 30	odd years
Landscape Architect	May 31	even years
Licensed Advanced Substance Use Disorder Counselor	May 31	odd years
Licensed Practical Nurse	January 31	even years
Licensed Substance Use Disorder Counselor	May 31	odd years
Marriage and Family Therapist	September 30	even years
Massage Apprentice	May 31	odd years
Massage Therapist	May 31	odd years
Master Esthetician	September 30	odd years
Master Esthetician Apprentice	September 30	odd years
Medication Aide Certified	March 31	odd years
Music Therapist	March 31	odd years
Nail Technologist	September 30	odd years
Nail Technologist Apprentice	September 30	odd years
Nail Technology School	September 30	odd years
Naturopath/Naturopathic Physician	May 31	even years
Occupational Therapist	May 31	odd years
Occupational Therapy Assistant	May 31	odd years
Optometrist	September 30	even years
Osteopathic Physician and Surgeon, Online Prescriber, Restricted Associate Osteopathic Physician	May 31	even years
Outfitter/Hunting Guide	May 31	even years
Pharmacy Class A-B-C-D-E, Online Contract Pharmacy	September 30	odd years
Pharmacist	September 30	odd years
Pharmacy Technician	September 30	odd years
Physical Therapist	May 31	odd years
Physical Therapist Assistant	May 31	odd years
Physician Assistant	May 31	even years
Physician and Surgeon, Online Prescriber, Restricted Associate Physician	January 31	even years
Plumber Apprentice, Journeyman, Master, Residential Master, Residential Journeyman	November 30	even years
Podiatric Physician	September 30	even years
Pre Need Funeral Arrangement Sales Agent	May 31	even years
Private Probation Provider	May 31	odd years
Professional Engineer	March 31	odd years
Professional Geologist	March 31	odd years
Professional Land Surveyor	March 31	odd years
Professional Structural Engineer	March 31	odd years
Psychologist	September 30	even years
Radiologic Technologist, Radiology Practical Technician Radiologist Assistant	May 31	odd years
Recreational Therapy Therapeutic Recreation Technician, Therapeutic Recreation Specialist, Master Therapeutic Recreation Specialist	May 31	odd years
Registered Nurse	January 31	odd years
Respiratory Care Practitioner	September 30	even years
Security Personnel	November 30	even years
Social Service Worker	September 30	even years
Speech-Language Pathologist	May 31	odd years
State Certified Commercial Interior Designer	March 31	odd years
Veterinarian	September 30	even years
Vocational Rehabilitation Counselor	March 31	odd years

(2) The following non-standard renewal terms and renewal or extension cycles are established by license classification in accordance with Subsection 58-1-308(1) and in accordance with specific requirements of the license:

(a) Associate Clinical Mental Health Counselor licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the Division and the Board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure.

(b) Associate Marriage and Family Therapist licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the Division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure; but the period of the extension may not exceed two years past the date the minimum supervised experience requirement has been completed.

(c) Certified Advanced Substance Use Disorder Counselor licenses shall be issued for a period of four years and may be extended if the licensee presents satisfactory evidence to the Division and Board that reasonable progress is being made toward completing the required hours of supervised experience necessary for the next level of licensure.

(d) Certified Advanced Substance Use Disorder Counselor Intern licenses shall be issued for a period of six months or until the examination is passed whichever occurs first.

(e) Certified Medical Language Interpreter Tier 1 and 2 licenses shall be issued for a period of three years and may be renewed. The initial renewal date of March 31, 2017, is established for these license classifications, subject to the provisions of Subsection R156-1-308c(7) to establish the length of the initial license period.

(f) Certified Substance Use Disorder Counselor licenses shall be issued for a period of two years and may be extended if the licensee presents satisfactory evidence to the Division and Board that reasonable progress is being made toward completing the required hours of supervised experience necessary for the next level of licensure.

(g) Certified Social Worker Intern licenses shall be issued for a period of six months or until the examination is passed whichever occurs first.

(h) Certified Substance Use Disorder Counselor Intern licenses shall be issued for a period of six months or until the examination is passed, whichever occurs first.

(i) Funeral Service Intern licenses shall be issued for a two year term and may be extended for an additional two year term if the licensee presents satisfactory evidence to the Division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure.

(j) Hearing Instrument Intern licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the Division and the Board that reasonable progress is being made toward passing the qualifying examination, but a circumstance arose beyond the control of the licensee, to prevent the completion of the examination process.

(k) Pharmacy technician trainee licenses shall be issued for a period of two years and may be extended if the licensee presents satisfactory evidence to the Division and the Board that reasonable progress is being made toward completing the requirements necessary for the next level of licensure.

(l) Psychology Resident licenses shall be issued for a two year term and may be extended if the licensee presents satisfactory evidence to the Division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure; but the period of the extension may not exceed two years past the date the minimum supervised experience requirement has been completed.

(m) Type I Foreign Trained Physician-Educator licenses will be issued initially for a one-year term and thereafter renewed every two years following issuance.

(n) Type II Foreign Trained Physician-Educator licenses will be issued initially for an annual basis and thereafter renewed annually up to four times following issuance if the licensee continues to satisfy the requirements described in Subsection 58-67-302.7(3) and completes the required continuing education requirements established under Section 58-67-303.

R156-1-310. Application for Division Determination Regarding Criminal Conviction.

The application procedures for a Division determination pursuant to Section 58-1-310 are clarified and established as follows:

(1) An individual applying for a determination shall submit the Application for Criminal History Determination form made available on the Division's website, containing a signed attestation and release.

(2) An individual shall submit a separate application for criminal history determination with processing fee for each occupational or professional license that the individual is interested in seeking.

(3) Pursuant to Subsection 58-1-310(2), the individual's complete criminal conviction history shall include:

(a) criminal convictions, pleas of nolo contendere, and pleas of guilty or nolo contendere which are held in abeyance pending the successful completion of probation; and

(b) current restrictions from possession, purchase, transfer, or ownership of a firearm or ammunition.

(4) Pursuant to Subsection 58-1-310(2)(e), the individual shall provide any additional documentation that may be required by the Division to verify or evaluate the individual's representations made in their application.

(5) A determination shall be based solely on the information contained in the individual's application and supporting documents.

(6) An individual whose application has been denied as incomplete, or who has received an unfavorable determination that their criminal record would disqualify them from obtaining the license, may submit a request for agency review to the executive director within 30 days of the date of issuance of the denial or of the unfavorable determination.

R156-1-[~~310~~]501.1. Cheating on Examinations.

(1) Policy.

The passing of an examination, when required as a condition of obtaining or maintaining a license issued by the Division, is considered to be a critical indicator that an applicant or licensee meets the minimum qualifications for licensure. Failure to pass an examination is considered to be evidence that an applicant or licensee does not meet the minimum qualifications for licensure. Accordingly, the accuracy of the examination result as a measure of an applicant's or licensee's competency must be assured. Cheating by an applicant or licensee on any examination required as a condition of obtaining a license or maintaining a license shall be considered unprofessional conduct and shall result in imposition of an appropriate penalty against the applicant or licensee.

(2) Cheating Defined.

Cheating is defined as the use of any means or instrumentality by or for the benefit of an examinee to alter the results of an examination in any way to cause the examination results to inaccurately represent the competency of an examinee with respect to the knowledge or skills about which they are examined. Cheating includes:

(a) communication between examinees inside of the examination room or facility during the course of the examination;

(b) communication about the examination with anyone outside of the examination room or facility during the course of the examination;

(c) copying another examinee's answers or looking at another examinee's answers while an examination is in progress;

(d) permitting anyone to copy answers to the examination;

(e) substitution by an applicant or licensee or by others for the benefit of an applicant or licensee of another person as the examinee in place of the applicant or licensee;

(f) use by an applicant or licensee of any written material, audio material, video material or any other mechanism not specifically authorized during the examination for the purpose of assisting an examinee in the examination;

(g) obtaining, using, buying, selling, possession of or having access to a copy of any portion of the examination prior to administration of the examination.

(3) Action Upon Detection of Cheating.

(a) The person responsible for administration of an examination, upon evidence that an examinee is or has been cheating on an examination shall notify the Division of the

circumstances in detail and the identity of the examinees involved with an assessment of the degree of involvement of each examinee;

(b) If cheating is detected prior to commencement of the examination, the examinee may be denied the privilege of taking the examination; or if permitted to take the examination, the examinee shall be notified of the evidence of cheating and shall be informed that the Division may consider the examination to have been failed by the applicant or licensee because of the cheating; or

(c) If cheating is detected during the examination, the examinee may be requested to leave the examination facility and in that case the examination results shall be the same as failure of the examination; however, if the person responsible for administration of the examination determines the cheating detected has not yet compromised the integrity of the examination, such steps as are necessary to prevent further cheating shall be taken and the examinee may be permitted to continue with the examination.

(d) If cheating is detected after the examination, the Division shall make appropriate inquiry to determine the facts concerning the cheating and shall thereafter take appropriate action.

(e) Upon determination that an applicant has cheated on an examination, the applicant may be denied the privilege of retaking the examination for a reasonable period of time, and the Division may deny the applicant a license and may establish conditions the applicant must meet to qualify for a license including the earliest date on which the Division will again consider the applicant for licensure.

KEY: diversion programs, licensing, supervision, evidentiary restrictions
Date of Enactment or Last Substantive Amendment: [~~November 8, 2018~~]2019
Notice of Continuation: December 6, 2016
Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-308; 58-1-501(2)

Commerce, Occupational and Professional Licensing
R156-46b-202
Informal Adjudicative Proceedings

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 44154
FILED: 10/29/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division of Occupational and Professional Licensing (Division) proposes these amendments to clarify the procedures for a criminal history determination made by the Division pursuant to new Section 58-1-310 enacted by H.B. 90, passed in the 2019 General Session, and to help coordinate the Division's transition to online renewal applications.

SUMMARY OF THE RULE OR CHANGE: New Subsection R156-46b-202(1)(b) categorizes as "informal" adjudicative proceedings an approval or denial of an application for a criminal history determination, and a favorable or unfavorable determination based on an application for criminal history determination. New Subsection R156-46b-202(2)(e) categorizes as "informal" adjudicative proceedings disciplinary proceedings initiated by a notice of agency action concerning evaluation or verification of documentation showing completion of or compliance with renewal requirements under Subsection 58-1-308(4)(b). Nonsubstantive formatting changes are also made throughout this section for clarity.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 58-1-106(1)(a) and Subsection 63G-4-102(6)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The addition of Subsection R156-46b-202(1)(b) will have no impact on the Division or other state agencies over and above the impact described in the fiscal note for H.B. 90 (2019), available online at: https://le.utah.gov/~2019/bills/static/HB0090.html, as it merely clarifies the Division's application procedures in accordance with the mandates of new Section 58-1-310. Additionally, new Subsection R156-46b-202(2)(e) will have no impact on the Division or other state agencies as it simply helps coordinate the Division's in-progress transition to online renewal applications across all occupations and professions. There will be a minimal cost to the Division of approximately $75 to disseminate this rule once the proposed amendments are made effective.
♦ LOCAL GOVERNMENTS: These proposed amendments are not expected to impact local governments as it will not affect local governments' practices or procedures.
♦ SMALL BUSINESSES: The addition of Subsection R156-46b-202(1)(b) will only impact individuals who seek an advance criminal history determination from the Division as authorized by new Section 58-1-310, and it is not expected to impact small businesses. New Subsection R156-46b-202(2)(e) will help streamline the renewal application experience for most persons and is therefore expected to indirectly benefit almost every person applying for license renewal with the Division, including small business licensees and non-small businesses that are owned by or employ licensees. However, quantifying this indirect impact for the Division's huge variety of renewal applicants is not possible because any savings will vary widely depending on circumstances.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The addition of Subsection R156-46b-202(1)(b) will affect an estimated 456 individuals annually who will seek an advance criminal history determination from the Division, but because this categorization merely clarifies the Division's application procedures in accordance with the mandates of Section 58-1-310, it is not expected to impact these persons over and

above the impact described in the fiscal note for H.B. (2019), available online at: https://le.utah.gov/~2019/bills/static/HB0090.html. New Subsection R156-46b-202(2)(e) will help streamline the renewal application experience for most persons and is therefore expected to indirectly benefit almost every person applying for license renewal with the Division. However, quantifying this indirect impact for the Division's huge variety of renewal applicants is not possible because any savings will vary widely depending on circumstances.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Division estimates that the addition of Subsection R156-46b-202(2)(e) will impose no compliance costs on any affected persons, and that the addition of Subsection R156-46b-202(1)(b) will have no compliance costs for any persons over and above that already included in the fiscal note for H.B. 90 (2019).

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Division proposes these amendments to clarify the procedures for a criminal history determination made by the Division pursuant to new Section 58-1-310 enacted by H.B. 90 (2019), and to help coordinate the Division's transition to online renewal applications. New Subsection R156-46b-202(1)(b) categorizes as "informal" adjudicative proceedings an approval or denial of an application for a criminal history determination, and a favorable or unfavorable determination based on an application for criminal history determination. New Subsection R156-46b-202(2)(e) categorizes as "informal" adjudicative proceedings disciplinary proceedings initiated by a notice of agency action concerning evaluation or verification of documentation showing completion of or compliance with renewal requirements under Section 58-1-308(4)(b). Nonsubstantive formatting changes are also made throughout this section for clarity. Small Businesses (less than 50 employees): The addition of Subsection R156-46b-202(1)(b) will only impact individuals who seek an advance criminal history determination from the Division as authorized by new Section 58-1-310, and it is not expected to impact small businesses. New Subsection R156-46b-202(2)(e) will help streamline the renewal application experience for most persons and is therefore expected to indirectly benefit every person applying for license renewal with the Division, including small business licensees and small businesses that are owned by or employ licensees. However, quantifying this indirect impact for the Division's renewal applicants is not possible because any savings will vary depending on circumstances. Non-Small Businesses (50 or more employees): The addition of Subsection R156-46b-202(1)(b) will only impact individuals who seek an advance criminal history determination from the Division as authorized by new Section 58-1-310, and it is not expected to impact non-small businesses. New Subsection R156-46b-202(2)(e) will help streamline the renewal application experience for most persons and is therefore expected to indirectly benefit almost every person applying for license renewal with the Division, including non-small business licensees and non-small businesses that are owned by or employ licensees. However, quantifying any indirect impact for the Division's renewal applicants is not possible because any savings will vary depending on circumstances.

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

♦ Deborah Blackburn by phone at 801-530-6060, by FAX at 801-530-6511, or by Internet E-mail at deborahblackburn@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/16/2019

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

♦ 12/03/2019 10:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 474 (fourth floor), Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 12/23/2019

AUTHORIZED BY: Mark Steinagel, Director

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	**FY 2020**	**FY 2021**	**FY 2022**
State Government	$75	$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:	**$75**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	60
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits:	**$0**	**$0**	**$0**
Net Fiscal Benefits:	**$(75)**	**$0**	**$0**

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

Appendix 2: Regulatory Impact to Non-Small Businesses
The addition of Subsection R156-46b-202(1)(b) will only impact individuals who seek an advance criminal history determination from the Division as authorized by new Section 58-1-310, and it is not expected to impact non-small businesses. New Subsection R156-46b-202(2)(e) will help streamline the renewal application experience for most persons and is therefore expected to indirectly benefit almost every person applying for license renewal with the Division, including non-small business licensees and non-small businesses that are owned by or employ licensees. However, quantifying any indirect impact for the Division's huge variety of renewal applicants is not possible because any savings will vary widely depending on circumstances.

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

R156. Commerce, Occupational and Professional Licensing.
R156-46b. Division Utah Administrative Procedures Act Rule.
R156-46b-202. Informal Adjudicative Proceedings.

(1) The following adjudicative proceedings initiated by other than a notice of agency action are classified as informal adjudicative proceedings:

(a) approval or denial of an application for:

(i) initial licensure[~~,~~];

(ii) renewal or reinstatement of licensure[~~, or~~];

(iii) relicensure;

[~~(b) denial of application for initial licensure or relicensure;~~

~~(c) denial of application for renewal or reinstatement of licensure;~~]

([~~d~~]iv) [~~approval or denial of application for~~]inactive or emeritus licensure status;

(v) a tax credit certificate by a psychiatrist, psychiatric mental health nurse practitioner, or volunteer retired psychiatrist under Section 58-1-111; or

(vi) criminal history determination;

(b) favorable or unfavorable determination, based on an application for criminal history determination pursuan to Section 58-1-310;

([e]c) board of appeal under Subsection 15A-1-207(3);

([f]d) approval or denial of claims against the Residence Lien Recovery Fund created under Title 38, Chapter 11;

([g]e) payment of approved claims against the Residence Lien Recovery Fund described in Subparagraph ([g]f);

([h]f) approval or denial of a request:

(i) to surrender licensure;

(ii) [~~approval or denial of request~~]for entry into diversion program under Section 58-1-404;

(iii) for modification of a disciplinary order;

(iv) for correction of procedural or clerical mistakes; or

(v) for correction of other than procdural or clerical mistakes;

([~~j~~]g) matters relating to diversion program;

([~~k~~]h) citation hearings held in accordance with citation authority established under Title 58;

[~~(l) approval or denial of request for modification of disciplinary order;~~]

([~~m~~]i) declaratory order determining the applicability of statute, rule or order to specified circumstances, when determined by the director to be conducted as an informal adjudicative proceeding;[

~~(n) approval or denial of request for correction of procedural or clerical mistakes;~~

~~(o) approval or denial of request for correction of other than procedural or clerical mistakes;~~]

([~~p~~]j) disciplinary sanctions imposed in a stipulation or memorandum of understanding with an applicant for licensure; and

[~~(q) approval or denial of application for a tax credit certificate by a psychiatrist, psychiatric mental health nurse practitioner, or volunteer retired psychiatrist under Section 58-1-111; and~~]

([~~r~~]k) all other requests for agency action permitted by statute or rule governing the Division not specifically classified as formal adjudicative proceedings in Subsection R156-46b-201(1).

(2) The following adjudicative proceedings initiated by a notice of agency action are classified as informal adjudicative proceedings:

(a) nondisciplinary proceeding which results in cancellation of licensure;

(b) disciplinary proceedings against:

(i) a contractor, plumber, electrician, or alarm company licensed under Title 58, Chapter 55;

(ii) a controlled substance licensee under Subsection 58-37-6(4)(g); and

(iii) a contract security company or armored car company for failure to replace a qualifier as required under Section 58-63-306[~~,~~];

(c) disciplinary proceedings initiated by a notice of agency action and order to show cause concerning violations of an order governing a license;

(d) disciplinary proceedings initiated by a notice of agency action in which the allegations of misconduct are limited to one or more of the following:

(i) Subsection 58-1-501(2)(c) or (d); or

(ii) Subsections R156-1-501(1) through (5); and

(e) disciplinary proceedings initiated by a notice of agency action concerning evaluation or verification of documentation showing completion of or compliance with renewal requirements under Subsection 58-1-308(4)(b).

KEY: administrative procedures, government hearings, occupational licensing
Date of Enactment or Last Substantive Amendment: [~~March 13, 2017~~]2019
Notice of Continuation: January 5, 2016
Authorizing, and Implemented or Interpreted Law: 63G-4-102(6); 58-1-106(1)(a)

Commerce, Occupational and Professional Licensing
R156-67
Utah Medical Practice Act Rule

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 44137
FILED: 10/17/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: As authorized by Sections 58-1-502 and 58-67-503, the Physicians Licensing Board recommends these proposed amendments to provide a monetary fine for a physician that 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, and to provide a monetary fine for a physician that violates Subsection 58-67-502(1)(d) enacted under H.B. 3001, passed in the 2018 Third Special Session.

SUMMARY OF THE RULE OR CHANGE: In Subsection R156-67-502(17), this proposed amendment includes the definition of unprofessional conduct for physicians 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. In Section R156-67-503, this proposed amendment adds to the unprofessional conduct rule and fine schedule for physicians to include the following sanctions for a physician who violates Subsections 58-67-502(1)(d) or R156-67-502(17): initial offense $500 to $1,500; second offense $1,500 to $5,000. In addition, these amendments replace the fine schedule language with a table listing the reference and fine.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-67-101 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a)

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: No negative fiscal impact to the state is expected beyond a minimal cost to the Division of Occupational and Professional Licensing (Division) of approximately $75 to disseminate this rule once these proposed amendments are made effective. 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 is available at: https://le.utah.gov/~2018S3/bills/static/HB3001.html. Any fines levied would be paid into the Physicians Education Fund.

♦ 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 licensed physicians practicing in Utah, which may indirectly affect the estimated 1,933 small businesses in Utah comprising establishments of licensed physicians or who employ licensed physicians, such as private or group practices, hospitals, or medical centers (NAICS 621110, 621420, 621112, 622210, and 622310). However, these proposed amendments are not expected to result in any measurable fiscal impact to small businesses. First, these amendments only impose a penalty for noncompliance with the Utah Code requirements, and the practices of most small businesses are, or should be, already consistent with existing requirements. Second, these proposed 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 11,247 licensed physicians 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 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 person from these proposed amendments.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: As authorized by Sections 58-1-502 and 58-67-503, the Physicians Licensing Board recommends these proposed amendments to provide a monetary fine for a physician that acts unprofessionally in failing to provide an opiate prescription consultation in accordance with new Section 58-37-19, which was originally enacted by H.B. 191 (2019). As a means of deterrence, this rule provides a monetary fine for a physician that violates Subsection 58-67-502(1)(d) enacted by H.B. 3001 (2018). Small Businesses (less than 50 employees): These proposed amendments will regulate licensed physicians practicing in Utah, which may indirectly affect the estimated 1,933 small businesses in Utah comprising establishments of licensed physicians or who employ licensed physicians, such as private or group practices, hospitals, or medical centers (NAICS 621110, 621420, 621112, 622210, and 622310). However, these proposed amendments are not expected to result in any measurable fiscal impact to small businesses. First, these amendments only impose a penalty for noncompliance with the Utah Code requirements, which practices are already consistent with existing requirements. Second, these proposed 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; 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 licensed physicians practicing in Utah, which may indirectly affect 169 non-small businesses in Utah organizations with licensed physicians such as hospitals or medical centers (NAICS 621110, 622210, 621111, 621112, 622310). 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:
♦ Larry Marx by phone at 801-530-6254, by FAX at 801-530-6511, or by Internet E-mail at lmarx@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/16/2019

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 12/03/2019 09:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 474 (fourth floor), Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 12/23/2019

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	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	60
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits:	**$0**	**$0**	**$0**
Net Fiscal Benefits:	**$(675)**	**$(600)**	**$(600)**

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

Appendix 2: Regulatory Impact to Non-Small Businesses

These proposed amendments will regulate licensed physicians practicing in Utah, which may indirectly affect the estimated 169 non-small businesses in Utah comprising establishments of licensed physicians or who employ licensed physician, such as private or group practices, hospitals, or medical centers (NAICS 621110, 622210, 621111, 621112, 622310). However, these proposed amendments are not expected to result in any measurable fiscal impact for non-small business. 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 proposed 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 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.

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

R156. Commerce, Occupational and Professional Licensing.
R156-67. Utah Medical Practice Act Rule.
R156-67-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) prescribing for oneself any Schedule II or III controlled substance; however, nothing in this rule shall be interpreted by the division or the board to prevent a licensee from using, possessing or administering to himself a Schedule II or III controlled substance which was legally prescribed for him by a licensed practitioner acting within his scope of licensure when it is used in accordance with the prescription order and for the use for which it was intended;

(2) knowingly prescribing, selling, giving away or administering, directly or indirectly, or offering to prescribe, sell, furnish, give away or administer any scheduled controlled substance as defined in Title 58, Chapter 37 to a drug dependent person, as defined in Subsection 58-37-2(1)(s) unless permitted by law and when it is prescribed, dispensed or administered according to a proper medical diagnosis and for a condition indicating the use of that controlled substance is appropriate;

(3) knowingly engaging in billing practices which are abusive and represent charges which are grossly excessive for services rendered;

(4) directly or indirectly giving or receiving any fee, commission, rebate or other compensation for professional services not actually and personally rendered or supervised; however, nothing in this section shall preclude the legal relationships within lawful professional partnerships, corporations or associations or the relationship between an approved supervising physician and physician assistants or advanced practice nurses supervised by them;

(5) knowingly failing to transfer a copy of pertinent and necessary medical records or a summary thereof to another physician when requested to do so by the subject patient or by his legally designated representative;

(6) failing to furnish to the board information requested by the board which is known by a licensee with respect to the quality and adequacy of medical care rendered to patients by physicians licensed under the Medical Practice Act;

(7) failing as an operating surgeon to perform adequate pre-operative and primary post-operative care of the surgical condition for a patient in accordance with the standards and ethics of the profession or to arrange for competent primary post-operative care of the surgical condition by a licensed physician and surgeon who is equally qualified to provide that care;

(8) billing a global fee for a procedure without providing the requisite care;

(9) supervising the providing of breast screening by diagnostic mammography services or interpreting the results of breast screening by diagnostic mammography to or for the benefit of any patient without having current certification or current eligibility for certification by the American Board of Radiology. However, nothing in this subsection shall be interpreted to prevent a licensed physician and surgeon from reviewing the results of any breast screening by diagnostic mammography procedure upon a patient for the purpose of considering those results in determining appropriate care and treatment of that patient if the results are interpreted by a physician and surgeon qualified under this subsection and a timely written report is prepared by the interpreting physician and surgeon in accordance with the standards and ethics of the profession;

(10) failing of a licensee under Title 58, Chapter 67, without just cause to repay as agreed any loan or other repayment obligation legally incurred by the licensee to fund the licensee's education or training as a medical doctor;

(11) failing of a licensee under Title 58, Chapter 67, without just cause to comply with the terms of any written agreement in which the licensee's education or training as a medical doctor is funded in consideration for the licensee's agreement to practice in a certain locality or type of locality or to comply with other conditions of practice following licensure;

(12) a physician providing services to a department of health by participating in a system under which the physician provides the department with completed and signed prescriptions without the name and address of the patient, or date the prescription is provided to the patient when the prescription form is to be completed by authorized registered nurses employed by the department of health which services are not in accordance with the provisions of Section 58-[~~17a~~]17b-620;

(13) failing to keep the division informed of a current address and telephone number;

(14) engaging in alternate medical practice except as provided in Section R156-67-603;

(15) violation of any provision of the American Medical Association (AMA) "Code of Medical Ethics", 2012-2013 edition, which is hereby incorporated by reference;[~~ and~~]

(16) failing to timely submit an annual written report to the division indicating that the physician has reviewed at least annually the dispensing practices of those authorized by the physician to dispense an opiate antagonist pursuant to Section R156-67-604; and

(17) 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.

R156-67-503. Administrative Penalties.

(1) In accordance with S[~~ubs~~]ections 58-1-502 and 58-67-503, unless otherwise ordered by the presiding officer, the following fine and citation schedule shall apply:

[~~(a) buying, selling, aiding or abetting or fraudulently obtaining, any medical diploma, license, certificate, or registration in violation of Subsection 58-67-501(1):~~

~~First Offense: $1,000-$5,000~~

~~Second Offense: $10,000~~

~~Ongoing Offense(s): $2,000 per day but not less than the second offense~~

~~(b) substantially interfering with a licensee's lawful and competent practice of medicine in violation of Subsections 58-67-501(1)(c)(i) or (ii):~~

~~First Offense: $1,000-$5,000~~

~~Second Offense: $10,000~~

~~Ongoing Offense(s): $2,000 per day but not less than the second offense~~

~~(e) entering into a contract that limits the licensee's ability to advise the licensee's patients fully about treatment options or other issues that affect the health care of the licensee's patients in violation of Subsection 58-67-501(1)(d):~~

~~First Offense: $1,000-$5,000~~

~~Second Offense: $10,000~~

~~Ongoing Offense(s): $2,000 per day but not less than the second offense~~

~~(d) using or employing the services of any individual to assist a licensee in any manner not in accordance with the generally recognized practices, standards, or ethics of the profession, state law, or division rule, or making a material misrepresentation regarding the qualifications for licensure in violation of Section 58-67-502:~~

~~First Offense: $1,000-$5,000~~

~~Second Offense: $10,000~~

~~Ongoing Offense(s): $2,000 per day but not less than the second offense~~

~~(e) 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 58-67-402.5(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~~

~~(f) 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 58-67-502.5(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~~

~~(g) 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 58-67-502.5(3):~~

~~First Offense: $5,000~~

~~Second Offense: $10,000~~

~~Ongoing Offense(s): $2,000 per day but not less than the second offense~~

~~(h) prescribing for oneself any Schedule II or III controlled substance in violation of Subsection R156-67-502(1):~~

~~First Offense: $5,000-$10,000~~

~~Second Offense: $10,000~~

~~Ongoing Offense(s): $2,000 per day but not less than the second offense~~

~~(i) knowingly prescribing, selling, giving away or administering, directly or indirectly, or offering to prescribe, sell, furnish, give away or administer any scheduled controlled substance as defined in Title 58, Chapter 37 to a drug dependent person, as defined in Subsection 58-37-2(1)(s) unless permitted by law and when it is prescribed, dispensed or administered according to a proper medical diagnosis and for a condition indicating the use of that controlled substance is appropriate in violation of Subsection R156-67-502(2):~~

~~First Offense:$5,000-$10,000~~

~~Second Offense:$10,000~~

~~Ongoing Offense(s): $2,000 per day but not less than the second offense~~

~~(j) knowingly engaging in billing practices which are abusive and represent charges which are grossly excessive for services rendered in violation of Subsection R156-67-502(3):~~

~~First Offense: $1,000-$5,000~~

~~Second Offense: $5,000-$10,000~~

~~Ongoing Offense(s): $2,000 per day but not less than the second offense~~

~~(k) directly or indirectly giving or receiving any fee, commission, rebate or other compensation for professional services not actually and personally rendered or supervised; however, nothing in this section shall preclude the legal relationships within lawful professional partnerships, corporations or associations or the relationship between an approved supervising physician and physician assistants or advanced practice nurses supervised by them in violation of Subsection R156-67-502(4):~~

~~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~~

~~(l) knowingly failing to transfer a copy of pertinent and necessary medical records or a summary thereof to another physician when requested to do so by the subject patient or by his legally designated representative in violation of Subsection R156-67-502(5):~~

~~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~~

~~(m) failing to furnish to the board information requested by the board which is known by a licensee with respect to the quality and adequacy of medical care rendered to patients by physicians licensed under the Medical Practice Act in violation of Subsection R156-67-502(6):~~

~~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~~

~~(n) failing as an operating surgeon to perform adequate pre-operative and primary post-operative care of the surgical condition for a patient in accordance with the standards and ethics of the profession or to arrange for competent primary post-operative care of the surgical condition by a licensed physician and surgeon who is equally qualified to provide that care in violation of Subsection R156-67-502(7):~~

~~First Offense: $1,000-$5,000~~

~~Second Offense: $5,000-$10,000~~

~~Ongoing Offense(s): $2,000 per day but not less than the second offense~~

~~(o) billing a global fee for a procedure without providing the requisite care in violation of Subsection R156-67-502(8):~~

~~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~~

~~(p) supervising the providing of breast screening by diagnostic mammography services or interpreting the results of breast screening by diagnostic mammography to or for the benefit of any patient without having current certification or current eligibility for certification by the American Board of Radiology in violation of Subsection R156-67-502(9):~~

~~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~~

~~(q) failing of a licensee without just cause to repay as agreed any loan or other repayment obligation legally incurred by the licensee to fund the licensee's education or training as a medical doctor in violation of Subsection R156-67-502(10):~~

~~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~~

~~(r) failing of a licensee without just cause to comply with the terms of any written agreement in which the licensee's education or training as a medical doctor is funded in consideration for the licensee's agreement to practice in a certain locality or type of locality or to comply with other conditions of practice following licensure in violation of Subsection R156-67-502(11):~~

~~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~~

~~(s) failing to keep the division informed of a current address and telephone number in violation of Subsection R156-67-502(13):~~

~~First Offense: $100-$500~~

~~Second Offense: $500-$3,000~~

~~Ongoing Offense(s): $2,000 per day but not less than the second offense~~

~~(t) engaging in alternate medical practice except as provided in Section R156-67-603 in violation of Subsection R156-67-502(14):~~

~~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~~

~~(u) violation of any provision of the American Medical Association (AMA) "Code of Medical Ethics", 2008-2009 edition, in violation of Subsection R156-67-502(15):~~

~~First Offense: $100-$5,000~~

~~Second Offense: $500-$10,000~~

~~Ongoing Offense(s): $2,000 per day but not less than the second offense~~

~~(v) failing to maintain medical records according to applicable laws, regulations, rules and code of ethics in violation of Section R156-67-602:~~

~~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~~

~~(w) practicing or engaging in, representing oneself to be practicing or engaging in, or attempting to practice or engage in any occupation or profession requiring licensure under this title in violation of Subsection 58-1-501(1):~~

~~First Offense: $5,000-$10,000~~

~~Second Offense: $10,000~~

~~Ongoing Offense(s): $2,000 per day but not less than the second offense~~

~~(x) violating, or aiding or abetting any other person to violate, any statute, rule, or order regulating an occupation or profession under this title in violation of Subsection 58-1-501(2)(a):~~

~~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~~

~~(y) violating, or aiding or abetting any other person to violate, any generally accepted professional or ethical standard applicable to an occupation or profession regulated under this title in violation of Subsection 58-1-501(2)(b):~~

~~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~~

~~(z) engaging in conduct that results in conviction, a plea of nolo contendere, or a plea of guilty or 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 occupation or profession for which the license was issued or is to be issued, bears a reasonable relationship to the licensee's or applicant's ability to safely or competently practice the occupation or profession in violation of Subsection 58-1-501(2)(c):~~

~~First Offense: $1,000-$5,000~~

~~Second Offense: $5,000-$10,000~~

~~Ongoing Offense(s): $2,000 per day but not less than the second offense~~

~~(aa) 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 same occupation or profession if the conduct would, in this state, constitute grounds for denial of licensure or disciplinary proceedings under Section 58-1-401 in violation of Subsection 58-1-501(2)(d):~~

~~First Offense: $1,000-$5,000~~

~~Second Offense: $5,000-$10,000~~

~~Ongoing Offense(s): $2,000 per day but not less than the second offense~~

~~(bb) 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 the occupation or profession in violation of Subsection 58-1-501(2)(e):~~

~~First Offense: $1,000-$5,000~~

~~Second Offense: $5,000-$10,000~~

~~Ongoing Offense(s): $2,000 per day but not less than the second offense~~

~~(cc) practicing or attempting to practice an occupation or profession regulated under this title despite being physically or mentally unfit to do so in violation of Subsection 58-1-501(2)(f):~~
~~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~~
~~(dd) practicing or attempting to practice an occupation or profession regulated under this title through gross incompetence, gross negligence, or a pattern of incompetency or negligence in violation of Subsection 58-1-501(2)(g):~~
~~First Offense: $1,000-$5,000~~
~~Second Offense: $5,000-$10,000~~
~~Ongoing Offense(s): $2,000 per day but not less than the second offense~~
~~(ee) practicing or attempting to practice an occupation or profession requiring licensure under this title by any form of action or communication which is false, misleading, deceptive, or fraudulent in violation of Subsection 58-1-501(2)(h):~~
~~First Offense: $1,000-$5,000~~
~~Second Offense: $5,000-$10,000~~
~~Ongoing Offense(s): $2,000 per day but not less than the second offense~~
~~(ff) practicing or attempting to practice an occupation or profession regulated under this title beyond the scope of the licensee's competency, abilities, or education in violation of Subsection 58-1-501(2)(i):~~
~~First Offense: $1,000-$5,000~~
~~Second Offense: $5,000-$10,000~~
~~Ongoing Offense(s): $2,000 per day but not less than the second offense~~
~~(gg) practicing or attempting to practice an occupation or profession regulated under this title beyond the scope of the licensee's license in violation of Subsection 58-1-501(2)(j):~~
~~First Offense: $1,000-$5,000~~
~~Second Offense: $5,000-$10,000~~
~~Ongoing Offense(s): $2,000 per day but not less than the second offense~~
~~(hh) verbally, physically, mentally, or sexually abusing or exploiting any person through conduct connected with the licensee's practice under this title or otherwise facilitated by the licensee's license in violation of Subsection 58-1-501(2)(k):~~
~~First Offense: $1,000-$5,000~~
~~Second Offense: $5,000-$10,000~~
~~Ongoing Offense(s): $2,000 per day but not less than the second offense~~
~~(ii) acting as a supervisor without meeting the qualification requirements for that position that are defined by statute or rule in violation of Subsection 58-1-501(2)(l):~~
~~First Offense: $1,000-$5,000~~
~~Second Offense: $5,000-$10,000~~
~~Ongoing Offense(s): $2,000 per day but not less than the second offense~~
~~(jj) issuing, or aiding and abetting in the issuance of, an order or prescription for a drug or device in violation of Subsection 58-1-501(2)(m):~~
~~First Offense: $5,000-$10,000~~
~~Second Offense: $10,000~~
~~Ongoing Offense(s): $2,000 per day but not less than the second offense~~
~~(kk) violating a provision of Section 58-1-501.5 in violation of Subsection 58-1-501(2)(n):~~
~~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~~
~~(ll) surrendering licensure to any other licensing or regulatory authority having jurisdiction over the licensee or applicant in the same occupation or profession while an investigation or inquiry into allegations of unprofessional or unlawful conduct is in progress or after a charging document has been filed against the applicant or licensee alleging unprofessional or unlawful conduct in violation of Subsection R156-1-501(1):~~
~~First Offense: $1,000-$5,000~~
~~Second Offense: $5,000-$10,000~~
~~Ongoing Offense(s): $2,000 per day but not less than the second offense~~
~~(mm) practicing a regulated occupation or profession in, through, or with a limited liability company which has omitted the words "limited company," "limited liability company," or the abbreviation "L.C." or "L.L.C." in the commercial use of the name of the limited liability company in violation of Subsection R156-1-501(2):~~
~~First Offense: $1,000-$5,000~~
~~Second Offense: $5,000-$10,000~~
~~Ongoing Offense(s): $2,000 per day but not less than the second offense~~
~~(nn) practicing a regulated occupation or profession in, through, or with a limited partnership which has omitted the words "limited partnership," "limited," or the abbreviation "L.P." or "Ltd" in the commercial use of the name of the limited partnership in violation of Subsection R156-1-501(3):~~
~~First Offense: $1,000-$5,000~~
~~Second Offense: $5,000-$10,000~~
~~Ongoing Offense(s): $2,000 per day but not less than the second offense~~
~~(oo) practicing a regulated occupation or profession in, through, or with a professional corporation which has omitted the words "professional corporation" or the abbreviation "P.C." in the commercial use of the name of the professional corporation in violation of Subsection R156-1-501(4):~~
~~First Offense: $1,000-$5,000~~
~~Second Offense: $5,000-$10,000~~
~~Ongoing Offense(s): $2,000 per day but not less than the second offense~~
~~(pp) using a DBA (doing business as name) which has not been properly registered with the Division of Corporations and with the Division of Occupational and Professional Licensing in violation of Subsection R156-1-501(5):~~
~~First Offense: $1,000-$5,000~~
~~Second Offense: $5,000-$10,000~~
~~Ongoing Offense(s): $2,000 per day but not less than the second offense~~
~~(qq) failing, as a prescribing practitioner, to follow the "Model Policy for the Use of Controlled Substances for the Treatment of Pain", May 2004, established by the Federation of State Medical Boards in violation of Subsection R156-1-501(6).~~

~~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~~
~~(rr) prescribing or administering to oneself any Schedule II or III controlled substance which is not lawfully prescribed by another licensed practitioner having authority to prescribe the drug in violation of Subsection R156-37-502(1)(a):~~
~~First Offense: $5000-$10,000~~
~~Second Offense: $10,000~~
~~Ongoing Offense(s): $2,000 per day but not less than the second offense~~
~~(ss) prescribing or administering a controlled substance for a condition he/she is not licensed or competent to treat in violation of Subsection R156-37-502(1)(b):~~
~~First Offense: $1,000-$5,000~~
~~Second Offense: $5,000-$10,000~~
~~Ongoing Offense(s): $2,000 per day but not less than the second offense~~
~~(tt) violating any federal or state law relating to controlled substances in violation of Subsection R156-37-502(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) failing to deliver to the Division all controlled substance license certificates issued by the Division to the Division upon an action which revokes, suspends or limits the license in violation of Subsection R156-37-502(3):~~
~~First Offense: $1,000-$5,000~~
~~Second Offense: $5,000-$10,000~~
~~Ongoing Offense(s): $2,000 per day but not less than the second offense~~
~~(vv) failing to maintain controls over controlled substances which would be considered by a prudent practitioner to be effective against diversion, theft, or shortage of controlled substances in violation of Subsection R156-37-502(4):~~
~~First Offense: $1,000-$5,000~~
~~Second Offense: $5,000-$10,000~~
~~Ongoing Offense(s): $2,000 per day but not less than the second offense~~
~~(ww) being unable to account for shortages of controlled substances any controlled substance inventory for which the licensee has responsibility in violation of Subsection R156-37-502(5):~~
~~First Offense: $1,000-$5,000~~
~~Second Offense: $5,000-$10,000~~
~~Ongoing Offense(s): $2,000 per day but not less than the second offense~~
~~(xx) knowingly prescribing, selling, giving away, or administering, directly or indirectly, or offering to prescribe, sell, furnish, give away, or administer any controlled substance to a drug dependent person, as defined in Subsection 58-37-2(1)(s), except for legitimate medical purposes as permitted by law in violation of Subsection R156-37-502(6):~~
~~First Offense: $5,000-$10,000~~
~~Second Offense: $10,000~~
~~Ongoing Offense(s): $2,000 per day but not less than the second offense~~
~~(yy) refusing to make available for inspection controlled substance stock, inventory, and records as required under this rule or other law regulating controlled substances and controlled substance records in violation of Subsection R156-37-502(7):~~
~~First Offense: $5,000-$10,000~~
~~Second Offense: $10,000~~
~~Ongoing Offense(s): $2,000 per day but not less than the second offense~~
~~(zz) violating any other provision of Section 58-37-8 "Prohibited Acts" not listed herein:~~
~~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~~]

TABLE
FINE SCHEDULE

VIOLATION	FIRST OFFENSE	SUBSEQUENT OFFENSE
58-1-501 (1)	$ 5,000 - $10,000	$10,000
58-1-501(2)(a)	$ 100 - $ 500	$ 500 - $ 3,000
58-1-501(2)(b)	$ 500 - $ 5,000	$ 1,500 - $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	$ 1,500 - $10,000
58-1-501(2)(g)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
58-1-501(2)(h)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
58-1-501(2)(i)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
58-1-501(2)(j)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
58-1-501(2)(k)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
58-1-501(2)(l)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
58-1-501(2)(m)	$ 5,000 - $10,000	$10,000
58-1-501.5 (5)	$ 500 - $ 1,500	$ 1,500 - $10,000
58-37-8	$ 500 - $ 5,000	$ 5,000 - $10,000
58-67-501(1)	$ 1,000 - $5,000	$ 2,000 - $10,000
58-67-502 (1)	$ 500 - $5,000	$ 5,000 - $10,000
58-67-502.5(1)	$ 5,000	$10,000
58-67-502.5(2)	$ 5,000	$10,000
58-67-502.5(3)	$ 5,000 - $10,000	$10,000
R156-1-501(1)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
R156-1-501(2)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
R156-1-501(3)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
R156-1-501(4)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
R156-1-501(5)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
R156-1-501(6)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
R156-1-501(7)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
R156-1-501(8)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
R156-1-501(9)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
R156-37-502(1)(a)	$ 5,000 - $10,000	$10,000
R156-37-502(1)(b)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
R156-37-502(2)	$ 500 - $ 5,000	$ 1,500 - $10,000
R156-37-502(3)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
R156-37-502(4)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
R156-37-502(5)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
R156-37-502(6)	$ 5,000 - $10,000	$10,000
R156-37-502(7)	$ 5,000 - $10,000	$10,000
R156-37-502(8)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
R156-37-502(9)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
R156-67-502(1)	$ 500 - $ 1,500	$ 1,500 - $10,000
R156-67-502(2)	$ 500 - $ 1,500	$ 1,500 - $10,000
R156-67-502(3)	$ 500 - $ 1,500	$ 1,500 - $10,000
R156-67-502(4)	$ 500 - $ 1,500	$ 1,500 - $10,000
R156-67-502(5)	$ 500 - $ 1,500	$ 1,500 - $10,000
R156-67-502(6)	$ 500 - $ 1,500	$ 1,500 - $10,000
R156-67-502(7)	$ 500 - $ 1,500	$ 1,500 - $10,000
R156-67-502(8)	$ 500 - $ 1,500	$ 1,500 - $10,000
R156-67-502(9)	$ 500 - $ 1,500	$ 1,500 - $10,000
R156-67-502(10)	$ 500 - $ 1,500	$ 1,500 - $10,000
R156-67-502(11)	$ 500 - $ 1,500	$ 1,500 - $10,000

R156-67-502(12)	$ 500 - $ 1,500	$ 1,500 - $10,000
R156-67-502(13)	$ 500 - $ 1,500	$ 1,500 - $10,000
R156-67-502(14)	$ 500 - $ 1,500	$ 1,500 - $10,000
R156-67-502(15)	$ 500 - $ 1,500	$ 1,500 - $10,000
R156-67-502(16)	$ 500 - $ 1,500	$ 1,500 - $10,000
R156-67-502(17)	$ 500 - $ 1,500	$ 1,500 - $10,000
Any other conduct that constitutes unprofessional or unlawful conduct	$ 500 - $ 1,500	$ 1,500 - $10,000
Ongoing offense(s):	$ 2,000 per day but not less than second offense	

(2) Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor.

(3) If multiple offenses are cited on the same citation, the fine shall be determined by evaluating the most serious offense.

(4) An investigative supervisor may authorize a deviation from the fine schedule based upon the aggravating or mitigating circumstances.

(5) The presiding officer for a contested citation shall have the discretion, after a review of the aggravating and mitigating circumstances, to increase or decrease the fine amount imposed by an investigator based upon the evidence reviewed.

KEY: physicians, licensing
Date of Enactment or Last Substantive Amendment: [~~October 9, 2018~~]2019
Notice of Continuation: February 8, 2016
Authorizing, and Implemented or Interpreted Law: 58-67-101; 58-1-106(1)(a); 58-1-202(1)(a)

Commerce, Occupational and Professional Licensing
R156-68
Utah Osteopathic Medical Practice Act Rule

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 44138
FILED: 10/17/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: As authorized by Sections 58-1-502 and 58-68-503, the Osteopathic Physicians and Surgeons Board recommends these proposed amendments to provide a monetary fine for a physician that 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, and to provide a monetary fine for a physician that violates Subsection 58-68-502(1)(d) as enacted by H.B. 3001, passed in the 2018 Third Special Session.

SUMMARY OF THE RULE OR CHANGE: In Subsection R156-68-502(16), this proposed amendment includes the definition of unprofessional conduct for physicians 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. In Section R156-68-503, this proposed amendment adds to the unprofessional conduct rule and fine schedule for physicians to include the following sanctions for a physician who violates Subsections 58-68-502(1)(d) or R156-68-502(16): initial offense $500 to $1,500; second offense $1,500 to $5,000. In addition, the amendments replace the fine schedule language with a table listing the reference and fine.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-68-101 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: No negative fiscal impact to the state is expected beyond a minimal cost to the Division of Occupational and Professional Licensing (Division) of approximately $75 to disseminate this rule once these proposed amendments are made effective. 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 is available at: https://le.utah.gov/~2018S3/bills/static/HB3001.html. Any fines levied would be paid into the Physicians Education Fund. The Division estimates that these proposed amendment 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.
♦ 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 licensed physicians practicing in Utah, which may indirectly affect the estimated 1,933 small businesses in Utah comprising establishments of licensed physicians or who employ licensed physicians, such as private or group practices, hospitals, or medical centers (NAICS 621110, 621420, 621112, 622210, and 622310). However, these proposed amendments are not expected to result in any measurable fiscal impact to small businesses. First, these amendments only impose a penalty for noncompliance with the Utah Code requirements, and the practices of most small businesses are, or should be, already consistent with existing requirements. Second, these proposed 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 1,222 licensed osteopathic physicians 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 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: As authorized by Sections 58-1-502 and 58-68-503, the Osteopathic Physicians and Surgeons Board recommends these proposed amendments for a monetary fine for a physician that fails to provide an opiate prescription consultation in accordance with new Section 58-37-19, which was enacted by H.B. 191 (2019), and to provide a monetary fine for a physician that violates Subsection 58-68-502(1)(d) as enacted by H.B. 3001 (2018). Small Businesses (less than 50 employees): These proposed amendments will regulate licensed physicians practicing in Utah, which may indirectly affect the estimated 1,933 small businesses of Utah licensed physicians or who employ licensed physicians, such as private or group practices, hospitals, or medical centers (NAICS 621110, 621420, 621112, 622210, and 622310). However, these proposed amendments are not expected to result in any measurable fiscal impact to small businesses. First, these amendment only impose a penalty for noncompliance with the Utah Code requirements, and the practices of most small businesses should be consistent with existing requirements. Second, these proposed 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 as these are unforeseeable; 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 licensed physicians practicing in Utah, which may indirectly affect 169 non-small businesses in Utah comprising establishments of licensed physicians or who employ licensed physician, such as hospitals or medical centers (NAICS 621110, 622210, 621111, 621112, 622310). 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:
♦ Larry Marx by phone at 801-530-6254, by FAX at 801-530-6511, or by Internet E-mail at lmarx@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/16/2019

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 12/03/2019 09:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 474 (fourth floor), Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 12/23/2019

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	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	60
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits:	**$0**	**$0**	**$0**
Net Fiscal Benefits:	**$(675)**	**$(600)**	**$(600)**

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

Appendix 2: Regulatory Impact to Non-Small Businesses

These proposed amendments will regulate licensed physicians practicing in Utah, which may indirectly affect the estimated 169 non-small businesses in Utah comprising establishments of licensed physicians or who employ licensed physician, such as private or group practices, hospitals, or medical centers (NAICS 621110, 622210, 621111, 621112, 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 proposed 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 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.

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

R156. Commerce, Occupational and Professional Licensing.
R156-68. Utah Osteopathic Medical Practice Act Rule.
R156-68-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) the prescribing for oneself any Schedule II or III controlled substance; however, nothing in this rule shall be interpreted by the division or the board to prevent a licensee from using, possessing, or administering to himself a Schedule II or III controlled substance which was legally prescribed for him by a licensed practitioner acting within his scope of licensure when it is used in accordance with the prescription order and for the use for which it was intended;

(2) knowingly, prescribing, selling, giving away or administering, directly or indirectly, or offering to prescribe, sell, furnish, give away or administer any scheduled controlled substance as defined in Title 58, Chapter 37 to a drug dependent person, as defined in Subsection [~~58-37-2(14)~~]58-37-2(1)(s) unless permitted by law and when it is prescribed, dispensed, or administered according to a proper medical diagnosis and for a condition indicating the use of that controlled substance is appropriate;

(3) knowingly engaging in billing practices which are abusive and represent charges which are grossly excessive for services rendered;

(4) directly or indirectly giving or receiving any fee, commission, rebate or other compensation for professional services not actually and personally rendered or supervised; however, nothing in this section shall preclude the legal relationships within lawful professional partnerships, corporations, or associations or the relationship between an approved supervising physician and physician assistants or advanced practice nurses supervised by them;

(5) knowingly failing to transfer a copy of pertinent and necessary medical records or a summary thereof to another physician when requested to do so by the subject patient or by his legally designated representative;

(6) failing to furnish to the board information requested by the board which is known by a licensee with respect to the quality and adequacy of medical care rendered to patients by osteopathic physicians licensed under the Utah Osteopathic Medical Practice Act;

(7) failing as an operating surgeon to perform adequate pre-operative and primary post-operative care of the surgical condition for a patient in accordance with the standards and ethics of the profession or to arrange for competent primary post-operative care of the surgical condition by a licensed physician and surgeon or osteopathic physician who is equally qualified to provide that care;

(8) billing a global fee for a procedure without providing the requisite care;

(9) supervising the providing of breast screening by diagnostic mammography services or interpreting the results of breast screening by diagnostic mammography to or for the benefit of any patient without having current certification or current eligibility for certification by the American Osteopathic Board of Radiology or the American Board of Radiology. However, nothing in this subsection shall be interpreted to prevent a licensed physician from reviewing the results of any breast screening by diagnostic mammography procedure upon a patient for the purpose of considering those results in determining appropriate care and treatment of that patient if the results are interpreted by a physician qualified under this subsection and a timely written report is prepared by the interpreting physician in accordance with the standards and ethics of the profession;

(10) failing of a licensee under Title 58, Chapter 68, without just cause to repay as agreed any loan or other repayment obligation legally incurred by the licensee to fund the licensee's education or training as an osteopathic physician;

(11) failing of a licensee under Title 58, Chapter 68, without just cause to comply with the terms of any written agreement in which the licensee's education or training as an osteopathic physician is funded in consideration for the licensee's agreement to practice in a certain locality or type of locality or to comply with other conditions of practice following licensure;

(12) a physician providing services to a department of health by participating in a system under which the physician provides the department with completed and signed prescriptions without the name and address of the patient, or date the prescription is provided to the patient when the prescription form is to be completed by authorized registered nurses employed by the department of health which services are not in accordance with the provisions of Section 58-[~~17a~~]17b-620;

(13) engaging in alternative medical practice except as provided in Section R156-68-603;

(14) violation of any provision of the American Medical Association's (AMA) "Code of Medical Ethics", 2012-2013 edition, which is hereby incorporated by reference;[~~and~~]

(15) failing to timely submit an annual written report to the division indicating that the osteopathic physician has reviewed at least annually the dispensing practices of those authorized by the osteopathic physician to dispense an opiate antagonist, pursuant to Section R156-68-604; and

(16) 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.

R156-68-503. Administrative Penalties.

(1) In accordance with S[~~ubs~~]ection 58-68-503, unless otherwise ordered by the presiding officer, the following fine and citation schedule shall apply:

TABLE
FINE SCHEDULE

VIOLATION	FIRST OFFENSE	SUBSEQUENT OFFENSE
58-1-501(1)	$ 5,000 - $10,000	$10,000
58-1-501(2)(a)	$ 100 - $ 500	$ 500 - $ 3,000
58-1-501(2)(b)	$ 500 - $ 5,000	$ 1,500 - $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	$ 1,500 - $10,000
58-1-501(2)(g)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
58-1-501(2)(h)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
58-1-501(2)(i)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
58-1-501(2)(j)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
58-1-501(2)(k)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
58-1-501(2)(l)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
58-1-501(2)(m)	$ 5,000 - $10,000	$10,000
58-37-8	$ 500 - $ 5,000	$ 1,500 - $10,000
58-68-501(1)	$ 1,000 - $5,000	$ 2,000 - $10,000
58-68-502 (1)	$ 500 - $5,000	$ 5,000 - $10,000
58-68-502.5(1)	$ 5,000	$10,000
58-68-502.5(2)	$ 5,000	$10,000
58-68-502.5(3)	$ 5,000 - $10,000	$10,000
58-1-501.5 (5)	$ 500 - $ 1,500	$ 1,500 - $10,000
R156-1-501(1)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
R156-1-501(2)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
R156-1-501(3)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
R156-1-501(4)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
R156-1-501(5)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
R156-1-501(6)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
R156-37-502(1)(a)	$ 5,000 - $10,000	$10,000
R156-37-502(1)(b)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
R156-37-502(2)	$ 500 - $ 5,000	$ 1,500 - $10,000
R156-37-502(3)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
R156-37-502(4)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
R156-37-502(5)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
R156-37-502(6)	$ 5,000 - $10,000	$10,000
R156-37-502(7)	$ 5,000 - $10,000	$10,000
R156-68-502(1)	$ 500 - $ 1,500	$ 1,500 - $10,000
R156-68-502(2)	$ 500 - $ 1,500	$ 1,500 - $10,000
R156-68-502(3)	$ 500 - $ 1,500	$ 1,500 - $10,000
R156-68-502(4)	$ 500 - $ 1,500	$ 1,500 - $10,000
R156-68-502(5)	$ 500 - $ 1,500	$ 1,500 - $10,000
R156-68-502(6)	$ 500 - $ 1,500	$ 1,500 - $10,000
R156-68-502(7)	$ 500 - $ 1,500	$ 1,500 - $10,000
R156-68-502(8)	$ 500 - $ 1,500	$ 1,500 - $10,000
R156-68-502(9)	$ 500 - $ 1,500	$ 1,500 - $10,000
R156-68-502(10)	$ 500 - $ 1,500	$ 1,500 - $10,000
R156-68-502(11)	$ 500 - $ 1,500	$ 1,500 - $10,000
R156-68-502(12)	$ 500 - $ 1,500	$ 1,500 - $10,000
R156-68-502(13)	$ 500 - $ 1,500	$ 1,500 - $10,000
R156-68-502(14)	$ 500 - $ 1,500	$ 1,500 - $10,000
R156-68-502(15)	$ 500 - $ 1,500	$ 1,500 - $10,000
R156-68-502(16)	$ 500 - $ 1,500	$ 1,500 - $10,000
Any other conduct that constitutes unprofessional or unlawful conduct	$ 500 - $ 1,500	$ 1,500 - $10,000
Ongoing offense(s):	$ 2,000 per day but not less than second offense	

[~~(a) buying, selling, aiding or abetting or fraudulently obtaining, any medical diploma, license, certificate, or registration in violation of Subsection 58-68-501(1):~~

~~First Offense: $1,000-$5,000~~

~~Second Offense: $10,000~~

~~Ongoing Offense(s): $2,000 per day but not less than the second offense~~

~~(b) substantially interfering with a licensee's lawful and competent practice of medicine in violation of Subsections 58-68-501(1)(c)(i) or (ii):~~

~~First Offense: $1,000-$5,000~~

~~Second Offense: $10,000~~

~~Ongoing Offense(s): $2,000 per day but not less than the second offense~~

~~(c) entering into a contract that limits the licensee's ability to advise the licensee's patients fully about treatment options or other issues that affect the health care of the licensee's patients in violation of Subsection 58-68-501(1)(d):~~

~~First Offense: $1,000-$5,000~~

~~Second Offense: $10,000~~

~~Ongoing Offense(s): $2,000 per day but not less than the second offense~~

~~(d) using or employing the services of any individual to assist a licensee in any manner not in accordance with the generally recognized practices, standards, or ethics of the profession, state law, or division rule, or making a material misrepresentation regarding the qualifications for licensure in violation of Section 58-68-502:~~

~~First Offense: $1,000-$5,000~~

~~Second Offense: $10,000~~

~~Ongoing Offense(s): $2,000 per day but not less than the second offense~~

(e) 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 58-68-502.5(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.

(f) 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 58-68-502.5(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.

(g) 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 58-68-502.5(3):

First Offense: $5,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(h) prescribing for oneself any Schedule II or III controlled substance in violation of Subsection R156-68-502(1):

First Offense: $5,000-$10,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(i) knowingly prescribing, selling, giving away or administering, directly or indirectly, or offering to prescribe, sell, furnish, give away or administer any scheduled controlled substance as defined in Title 58, Chapter 37 to a drug dependent person, as defined in Subsection 58-37-2(1)(s) unless permitted by law and when it is prescribed, dispensed or administered according to a proper medical diagnosis and for a condition indicating the use of that controlled substance is appropriate in violation of Subsection R156-68-502(2):

First Offense:$5,000-$10,000

Second Offense:$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(j) knowingly engaging in billing practices which are abusive and represent charges which are grossly excessive for services rendered in violation of Subsection R156-68-502(3):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(k) directly or indirectly giving or receiving any fee, commission, rebate or other compensation for professional services not actually and personally rendered or supervised; however, nothing in this section shall preclude the legal relationships within lawful professional partnerships, corporations or associations or the relationship between an approved supervising physician and physician assistants or advanced practice nurses supervised by them in violation of Subsection R156-68-502(4):

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

(l) knowingly failing to transfer a copy of pertinent and necessary medical records or a summary thereof to another physician when requested to do so by the subject patient or by his legally designated representative in violation of Subsection R156-68-502(5):

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

(m) failing to furnish to the board information requested by the board which is known by a licensee with respect to the quality and adequacy of medical care rendered to patients by physicians licensed under the Utah Osteopathic Medical Practice Act in violation of Subsection R156-68-502(6):

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

(n) failing as an operating surgeon to perform adequate pre-operative and primary post-operative care of the surgical condition for a patient in accordance with the standards and ethics of the profession or to arrange for competent primary post-operative care of the surgical condition by a licensed osteopathic physician and surgeon who is equally qualified to provide that care in violation of Subsection R156-68-502(7):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(o) billing a global fee for a procedure without providing the requisite care in violation of Subsection R156-68-502(8):

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

(p) supervising the providing of breast screening by diagnostic mammography services or interpreting the results of breast screening by diagnostic mammography to or for the benefit of any patient without having current certification or current eligibility for certification by the American Board of Radiology in violation of Subsection R156-68-502(9):

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

(q) failing of a licensee without just cause to repay as agreed any loan or other repayment obligation legally incurred by the licensee to fund the licensee's education or training as a medical doctor in violation of Subsection R156-68-502(10):

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

(r) failing of a licensee without just cause to comply with the terms of any written agreement in which the licensee's education or training as a medical doctor is funded in consideration for the licensee's agreement to practice in a certain locality or type of locality or to comply with other conditions of practice following licensure in violation of Subsection R156-68-502(11):

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

(s) failing to keep the division informed of a current address and telephone number in violation of Subsection 58-1-501(2)(a) and Section 58-1-301.7:

First Offense: $100-$500

Second Offense: $500-$3,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(t) engaging in alternate medical practice except as provided in Section R156-68-603 in violation of Subsection R156-68-502(13):

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

(u) violation of any provision of the American Medical Association (AMA) "Code of Medical Ethics", 2008-2009 edition, in violation of Subsection R156-68-502(14):

First Offense: $100-$5,000

Second Offense: $500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(v) failing to maintain medical records according to applicable laws, regulations, rules and code of ethics in violation of Section R156-68-602:

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

(w) practicing or engaging in, representing oneself to be practicing or engaging in, or attempting to practice or engage in any occupation or profession requiring licensure under this title in violation of Subsection 58-1-501(1):

First Offense: $5,000-$10,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(x) violating, or aiding or abetting any other person to violate, any statute, rule, or order regulating an occupation or profession under this title in violation of Subsection 58-1-501(2)(a):

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

(y) violating, or aiding or abetting any other person to violate, any generally accepted professional or ethical standard applicable to an occupation or profession regulated under this title in violation of Subsection 58-1-501(2)(b):

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

(z) engaging in conduct that results in conviction, a plea of nolo contendere, or a plea of guilty or 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 occupation or profession for which the license was issued or is to be issued, bears a reasonable relationship to the licensee's or applicant's ability to safely or competently practice the occupation or profession in violation of Subsection 58-1-501(2)(c):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(aa) 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 same occupation or profession if the conduct would, in this state, constitute grounds for denial of licensure or disciplinary proceedings under Section 58-1-401 in violation of Subsection 58-1-501(2)(d):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(bb) 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 the occupation or profession in violation of Subsection 58-1-501(2)(e):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(cc) practicing or attempting to practice an occupation or profession regulated under this title despite being physically or mentally unfit to do so in violation of Subsection 58-1-501(2)(f):

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

(dd) practicing or attempting to practice an occupation or profession regulated under this title through gross incompetence, gross negligence, or a pattern of incompetency or negligence in violation of Subsection 58-1-501(2)(g):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(ee) practicing or attempting to practice an occupation or profession requiring licensure under this title by any form of action or communication which is false, misleading, deceptive, or fraudulent in violation of Subsection 58-1-501(2)(h):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(ff) practicing or attempting to practice an occupation or profession regulated under this title beyond the scope of the licensee's competency, abilities, or education in violation of Subsection 58-1-501(2)(i):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(gg) practicing or attempting to practice an occupation or profession regulated under this title beyond the scope of the licensee's license in violation of Subsection 58-1-501(2)(j):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(hh) verbally, physically, mentally, or sexually abusing or exploiting any person through conduct connected with the licensee's practice under this title or otherwise facilitated by the licensee's license in violation of Subsection 58-1-501(2)(k):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(ii) acting as a supervisor without meeting the qualification requirements for that position that are defined by statute or rule in violation of Subsection 58-1-501(2)(l):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(jj) issuing, or aiding and abetting in the issuance of, an order or prescription for a drug or device in violation of Subsection 58-1-501(2)(m):

First Offense: $5,000-$10,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(kk) violating a provision of Section 58-1-501.5 in violation of Subsection 58-1-501(2)(n):

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

(ll) surrendering licensure to any other licensing or regulatory authority having jurisdiction over the licensee or applicant in the same occupation or profession while an investigation or inquiry into allegations of unprofessional or unlawful conduct is in progress or after a charging document has been filed against the applicant or licensee alleging unprofessional or unlawful conduct in violation of Subsection R156-1-501(1):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(mm) practicing a regulated occupation or profession in, through, or with a limited liability company which has omitted the words "limited company," "limited liability company," or the abbreviation "L.C." or "L.L.C." in the commercial use of the name of the limited liability company in violation of Subsection R156-1-501(2):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(nn) practicing a regulated occupation or profession in, through, or with a limited partnership which has omitted the words "limited partnership," "limited," or the abbreviation "L.P." or "Ltd" in the commercial use of the name of the limited partnership in violation of Subsection R156-1-501(3):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(oo) practicing a regulated occupation or profession in, through, or with a professional corporation which has omitted the words "professional corporation" or the abbreviation "P.C." in the commercial use of the name of the professional corporation in violation of Subsection R156-1-501(4):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(pp) using a DBA (doing business as name) which has not been properly registered with the Division of Corporations and with the Division of Occupational and Professional Licensing in violation of Subsection R156-1-501(5):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(qq) failing, as a prescribing practitioner, to follow the "Model Policy for the Use of Controlled Substances for the Treatment of Pain", May 2004, established by the Federation of State Medical Boards in violation of Subsection R156-1-501(6):

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

(rr) prescribing or administering to oneself any Schedule II or III controlled substance which is not lawfully prescribed by another licensed practitioner having authority to prescribe the drug in violation of Subsection R156-37-502(1)(a):

First Offense: $5000-$10,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(ss) prescribing or administering a controlled substance for a condition he/she is not licensed or competent to treat in violation of Subsection R156-37-502(1)(b):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(tt) violating any federal or state law relating to controlled substances in violation of Subsection R156-37-502(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) failing to deliver to the Division all controlled substance license certificates issued by the Division to the Division upon an action which revokes, suspends or limits the license in violation of Subsection R156-37-502(3):~~
~~First Offense: $1,000-$5,000~~
~~Second Offense: $5,000-$10,000~~
~~Ongoing Offense(s): $2,000 per day but not less than the second offense~~
~~(vv) failing to maintain controls over controlled substances which would be considered by a prudent practitioner to be effective against diversion, theft, or shortage of controlled substances in violation of Subsection R156-37-502(4):~~
~~First Offense: $1,000-$5,000~~
~~Second Offense: $5,000-$10,000~~
~~Ongoing Offense(s): $2,000 per day but not less than the second offense~~
~~(ww) being unable to account for shortages of controlled substances any controlled substance inventory for which the licensee has responsibility in violation of Subsection R156-37-502(5):~~
~~First Offense: $1,000-$5,000~~
~~Second Offense: $5,000-$10,000~~
~~Ongoing Offense(s): $2,000 per day but not less than the second offense~~
~~(xx) knowingly prescribing, selling, giving away, or administering, directly or indirectly, or offering to prescribe, sell, furnish, give away, or administer any controlled substance to a drug dependent person, as defined in Subsection 58-37-2(1)(s), except for legitimate medical purposes as permitted by law in violation of Subsection R156-37-502(6):~~
~~First Offense: $5,000-$10,000~~
~~Second Offense: $10,000~~
~~Ongoing Offense(s): $2,000 per day but not less than the second offense~~
~~(yy) refusing to make available for inspection controlled substance stock, inventory, and records as required under this rule or other law regulating controlled substances and controlled substance records in violation of Subsection R156-37-502(7):~~
~~First Offense: $5,000-$10,000~~
~~Second Offense: $10,000~~
~~Ongoing Offense(s): $2,000 per day but not less than the second offense~~
~~(zz) violating any other provision of Section 58-37-8 "Prohibited Acts" not listed herein:~~
~~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~~]

(2) Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor.

(3) If multiple offenses are cited on the same citation, the fine shall be determined by evaluating the most serious offense.

(4) An investigative supervisor may authorize a deviation from the fine schedule based upon the aggravating or mitigating circumstances.

(5) The presiding officer for a contested citation shall have the discretion, after a review of the aggravating and mitigating circumstances, to increase or decrease the fine amount imposed by an investigator based upon the evidence reviewed.

KEY: osteopaths, licensing, osteopathic physician
Date of Enactment or Last Substantive Amendment: [~~October 9, 2018~~]2019
Notice of Continuation: January 8, 2018
Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-68-101

Governor, Economic Development
R357-5
Motion Picture Incentive

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 44179
FILED: 11/01/2019

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule filing is to clarify the requirements for a motion picture company or digital media company to qualify for a motion picture incentive. Various updates and nonsubstantive formatting changes are also made throughout this rule.

SUMMARY OF THE RULE OR CHANGE: Section R357-5-102 is updated to create new definitions, update existing definitions and delete obsolete definitions that will be used to administer the program. Sections R357-5-103, R357-5-104, and R357-5-106 are updated to add clarity for administration of the program. Section R357-5-108 is deleted because it is obsolete.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63N-8-104(1)

MATERIALS INCORPORATED BY REFERENCE:
♦ Adds Agreed-Upon Procedures, published by GOED, 10/01/2019

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There is no aggregate anticipated cost or savings to the state budget. These changes merely codify the procedures the Governor's Office of Economic Development (Office) will use to administer the program.
♦ LOCAL GOVERNMENTS: There is no aggregate anticipated cost or savings to local governments because local governments are not required to comply with or enforce this rule.
♦ SMALL BUSINESSES: There is no aggregate anticipated cost or savings to small businesses because this proposed

amendment does not create new obligations for small businesses, nor does it increase the costs associated with any existing obligation. Participation in the program is optional.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no aggregate anticipated cost or savings to persons other than small businesses, businesses, or local government entities because this proposed amendment does not create new obligations for persons other than small businesses, businesses, or local government entities, nor does it increase the costs associated with any existing obligation.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons because participation in the program is optional.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: These rules will have no impact on businesses. The purpose of this rule filing is to clarify the standards for participation in the program. Additionally, participation in the program is optional.

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

GOVERNOR
ECONOMIC DEVELOPMENT
THIRD FLOOR
60 E SOUTH TEMPLE
SALT LAKE CITY, UT 84111
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Dane Ishihara by phone at 801-538-8865, or by Internet E-mail at dishihara@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/16/2019

THIS RULE MAY BECOME EFFECTIVE ON: 12/23/2019

AUTHORIZED BY: Val Hale, Executive Director

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	**FY 2020**	**FY 2021**	**FY 2022**
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
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 amendment is to clarify the standards for participation in the program. There are no general regulations being promulgated by this proposed amendment because the program is voluntary and does not require non-participants to do anything. There is no impact to businesses or persons in general because this rule only applies to those who chose to participate in this program in order to receive a grant.

The head of the Governor's Office of Economic Development, Val Hale, has reviewed and approved this fiscal analysis.

R357. Governor, Economic Development.
R357-5. Motion Picture Incentive Rule.
R357-5-101. Authority.

(1) Subsection 63N-8-104(1) requires the office to make rules establishing the standards that a motion picture company and digital media company must meet to qualify for a motion picture incentive and the criteria for determining the amount of the motion picture incentive.

R357-5-102. Definitions.

[~~(1)~~] The definitions below are in addition to or serve to clarify the definitions found in Utah Code Section 63N-8-102.

(1) "Cast" means performers appearing in a particular film with featured or speaking roles.

(2) "Community Film Incentive Program" means a production where a motion picture company has a maximum budget of under $500,000.

(3) "Crew" means those involved in the production of a film who are not defined as cast or extras.

[~~(3) "Dollars Left in the State" means in addition to 63N-8 does NOT include:~~

~~(a) Salary for any individual earning more than 500,000~~

~~(b) Marketing and distributions expenditures~~

~~(c) 50% of shipping or airfare charges with one destination point within Utah and all shipping or airfare outside of Utah~~

~~(d) any value beyond the depreciated amount for capital expenditures, rentals, and any purchases made where the item is used for only a portion of its useful life~~

~~(e) any per diem value beyond 100 percent of the current federal rate for the area~~

] (4) "Deferred Payment" means, tax credits in amounts over $2,000,000 paid in installments over a specified number of years but not to exceed three years.

(5) "Extras" means an extra or background actor is a performer in a production, who appears in a non-speaking or non-singing (silent) capacity, usually in the background.

([~~5~~]6) "Independent Utah CPA" means, a Certified Public Accountant (CPA) holding an active license in the state of Utah that is independent of the production and production activities.

(7) "Made-For-Television" means feature length motion pictures specifically made-for-television or streaming platforms.

([~~6~~]8) "Motion Pictures" means[~~, but is not limited to, narrative or documentary films or high definition digital production, and originally intended for commercial distribution to motion picture theaters, directly to the home video and/or DVD markets, cable television, broadcast television or video on demand.~~

~~(a) The term "Motion Picture" does not include:~~

~~(i) News;~~

~~(ii) Commercials;~~

~~(iii) Live Broadcasts;~~

~~(iv) Digital Media Products;~~

~~(v) Live Sporting events;~~

~~(vi) Live Coverage of other theatrical or entertainment events;~~

~~(vii) Programs that solicit funds; or~~

~~(viii) Reality television.~~] a production that is originally intended for commercial distribution and does not include:

(a) news;

(b) commercials;

(c) live broadcasts;

(d) digital media products;

(e) live sporting events;

(f) live coverage of theatrical or entertainment events; or

(g) programs that solicit funds.

(9) "Principal photography", "Producing" or "Production" means the filming of major and significant portions of a film that involves the main/lead actors/actresses.

([~~7~~]10) "Rural Utah" means all counties outside of Davis County, Salt Lake County, Utah County, and Weber County.

([~~8~~]11) "Significant Percentage of cast and crew from Utah" means:

(a) For productions that have less than $500,000 dollars left in state: that at least 85% of the cast and crew are Utah residents excluding extras[~~ and five principal cast~~].

(b) For productions that have more than $500,000 dollars left in state: that at least 75% of the cast and crew are Utah residents excluding extras and five principal cast.

([~~9~~]12) "State-approved production" means a production that is:

(a) approved by the office and ratified by the Governor's Office of Economic Development Board; and

(b) all or a portion of the production is produced in the state.

([~~10~~]13) "Total budget for the [~~product~~]project" means the total budget for Dollars left in state of pre-production, production and post-production.

(14) "Television series" means a group of episodes of a production released on television or streaming platforms.

([~~11~~]15) "Treatment" means: A written description of the production.

([~~12~~]16) "UFC" means: the Utah Film Commission, a sub-entity of the Utah Governor's Office of Economic Development.

([~~13~~]17) "Utah Resident" means a person who [~~files a Utah State Tax Return as a resident of Utah~~]has lived in Utah for the entire year (at least 183 days) even if temporarily outside of Utah for an extended length of time, maintains a permanent home in Utah, and is subject to State of Utah personal income tax.

R357-5-103. Motion Picture Incentive Applications: Procedures and Minimum Requirements for a Motion Picture Company.

(1) A motion picture company's application may be approved for a motion picture incentive award only if all of the following requirements are met in addition to those listed throughout 63N-8:

(a) [~~T~~]the motion picture company is [~~making~~]producing all or a portion of a motion picture in the state of Utah;

(b) [~~T~~]the motion picture is a state approved production;

(c) [~~T~~]the motion picture company guarantees UFC access to production's behind the scenes footage, interviews and still photography or allow the office to produce its own;

(d) [~~T~~]the motion picture company guarantees the production will display the Utah logo as outlined in the incentive agreement and provide a screen shot of the logo as it appears in the credits[~~-~~];

(e) [~~T~~]the motion picture company has obtained financing for 100% of the anticipated Dollars left in state for the project, and the applicant provides proof of financing in a form specified in the application documents.

(f) [~~T~~]the motion picture company must retain financing as set forth in subsection (e) for the life of the contract with the State[~~-~~];

(g) [~~T~~]the motion picture company intends to report at least $500,000 dollars left in state if applying for a film incentive pursuant to R357-5-5(1) or a maximum of under $500,000 if applying for an incentive pursuant to R357-5-5(2); and

(h) [~~I~~]if a production has initiated principal photography prior to the Office's receipt of a completed application or will not commence principal photography for more than 90 days from date of application, the application for incentive may be denied.

(2) The motion picture incentive application shall not be construed as a property right and neither the Office nor the Board is required to approve an application.

(3) In order to receive state approval for an incentive application, a production must, in the State's sole discretion, reflect positively on the image of state of Utah.

(a) In determining whether or not a production reflects positively on the image of the state of Utah, the Office and Board may take into consideration:

(i) [~~W~~]whether and to what extent the motion picture promotes Utah as a tourist destination;

[~~(ii) the overall strength and viability of the script of the production;~~

~~(iii) the industry reputation of the production or motion picture company;~~

~~(iv) the record of the motion picture company in matters of safety and responsible filmmaking; and~~

~~(v) the existence of any legal action or the likelihood of any legal action in relation to either the production or the motion picture company;~~]

([~~v~~]ii) general standards of decency and respect for the diverse beliefs and values of Utahns; and

([~~v~~]iii) any other factors related to the production or the motion picture company that may reasonably affect the image of the state of Utah.

(4) The Office and Board may consider the relative merit of applications, and the need to reserve its allocations for future applications.

(a) Factors that contribute to the relative merit [~~will be weighted by a point system available on the Utah Film Commission's website and~~] include, but are not limited to:

(i) the overall strength and viability of the script of the production;

(ii) the industry reputation of the production or motion picture company;

(iii) the record of the motion picture company in matters of safety and responsible filmmaking;

(iv) the existence of any legal action or the likelihood of any legal action in relation to either the production or the motion picture company; and

(v) anticipated:

([~~i~~]A) [~~N~~]number of [~~anticipated~~] jobs in Utah;

([~~ii~~]B) [~~N~~]number of production days in Utah;

([~~iii~~]C) [~~Length of employment for Utah cast and crew~~]dollars left in state;

([~~iv~~]D) [~~L~~]local cast and crew wages;

([~~v~~]E) [~~Other economic development~~] new state revenue that the film contributes in the State of Utah;

(b) Applications shall be made in the form prescribed by the Office, including required attachments or additional information.

(i) Incomplete applications will not be considered received until the application is deemed complete by the UFC.

(ii) A script is required as part of the application.

([~~I~~]iii) A treatment may only be submitted where a script for a project type is not possible for example[~~, because~~] the project is a documentary. The Utah Film Commission will determine in its sole discretion if a treatment can be substituted for a script.

(5) A production company may file more than one application if it has more than one production in the state, but a separate application must be filed for each production.

(6) Applications will be subject to submission deadlines, which will be posted on the Utah Film Commission Website and are available in other formats upon request.

([~~a~~]7) If the applicant fails to submit a completed application prior to the submission deadline, the application may be considered with the next round of submissions.

([~~7~~]8) Submitting an application does not guarantee approval of a film incentive.

([~~a~~]9) All film incentives are subject to and contingent upon the amount of available funding and/or tax credit allocation available in the Motion Picture Restricted account;

([~~b~~]10) Lack of state approval shall not be construed as prohibiting a production or prohibiting a motion picture company from filming in Utah.

(11) A production's eligibility for an incentive ends upon approval or denial by the Office. A production may reapply subject to compliance with program statue and rules.

R357-5-104. Motion Picture Incentive Applications: Award for a Motion Picture Production.

(1) Upon receipt of a completed application, the Office will align each project into incentive categories as set forth in R357-5-105.

(2) In calculating dollars left in the state, the Office may limit the following expenditures:

(a) all salary above $500,000 for one individual;

(b) marketing and distributions expenditures;

(c) any value beyond the depreciated amount for capital expenditures, rentals, and any purchases made where the item is used for only a portion of its useful life; and

(d) any per diem value beyond 100 percent of the current federal rate for the area.

R357-5-105. Film Categories and Conditions.

(1) Utah Motion Picture Incentive Program

(a) The Utah Motion Picture Incentive Program will have an incentive cap of 20% the dollars left in state, unless a higher cap is awarded pursuant to subsection (c).

(b) Incentives will only be awarded if the motion picture company meets criteria listed in statute, R357-5-103

(c) An additional cap of up to 5% may be granted if the motion picture company:

(i) Motion picture company has at least $1,000,000 in qualified dollars left in state, and

(ii) 75% of cast and crew are Utah residents excluding extras and five principal cast members, or

(iii) 75% of production days occur in rural Utah

(2) Community Film Incentive Program

(a) The Community Film Incentive Program will provide a maximum of a 20% post[~~-~~]-performance cash rebate or tax incentive for dollars left in state by a community film production.

(b) Community Film Incentive Program incentives will only be awarded if the motion picture company meets criteria listed in statute, R357-5-103, has a maximum budget of under $500,000, and meets the criteria found on the Utah Film Commission Website.

(c) Applications for the Community Film Incentive Program will be reviewed monthly.

(d) Awards will be made to motion picture companies based upon the criteria outlined in the Community Film Incentive Program application provided by UFC.

(3) For applications made under either (1) or (2), the motion picture company must provide all information and documentation to show measureable outcomes as outlined in the application for any incentive listed in R357-5-105.

R357-5-106. Funding -- Post-Performance Compliance.

(1) A motion picture company may qualify for issuance of either a Post-Performance Refundable Tax Credit or Post-Performance Cash award based on the method outlined in their contract if all of the following requirements are met in addition to those listed throughout 63N-8:

(a) The motion picture company adheres to the Agreed-Upon Procedures version 1.0 dated November 1, 2019 which will be posted on the Utah Film Commission Website and hereby adopted and incorporated by reference.[~~The motion picture company must follow the Agreed-Upon Procedures, which will be posted on the Utah Film Commission Website.~~

~~(i) If the motion picture company has residency requirements, the motion picture company will be responsible for providing sufficient documentation to the CPA for residency verification, this includes:~~

~~(A) A copy of a Utah driver's license; or~~

~~(B) A copy of government issued identification (from any state or foreign government or student ID/Report card), and (2) documentation showing residency, covering at least 183 days, matching the name, or parent or guardian, on the submitted government ID.~~

~~(b) The motion picture company must submit a completed final application to the Governor's Office of Economic Development's Compliance team, in the form prescribed by the Office, including required attachments or additional information.~~

~~(2) A CPA when conducting a review of a motion picture company's expenses and contract requirements, the CPA must follow the Agreed-Upon Procedures, which will be posted on the Utah Film Commission Website.~~

~~(3) The CPA must retain work papers related to performing these Agreed-Upon Procedures for at least two years. The Governor's Office of Economic Development, at its own discretion, shall have the right to review the CPA's work to ensure consistency among the various CPAs, to find areas for improvement to the Agreed-Upon Procedures, and as an internal control.~~]

R357-5-107. Funding -- Post-Performance Refundable Tax Credit.

(1) Post-performance refundable tax credits are nontransferable and can only be issued to the state-approved motion picture that submits the motion picture incentive application and is approved by the office with advice from the Board.

(2) Post-performance refundable tax credits in amounts over $2,000,000 may be paid in deferred payments over multiple years as authorized by the office within the approved board motion for the tax credit.

(a) All deferred payments for tax credits over $2,000,000 are subject to available tax credit allocation as authorized by the legislature.

(b) Each annual installment of the deferred payment amount shall be outlined in the tax credit agreement.

(c) A deferred payment plan cannot exceed three years.

[~~R357-5-8. Funding -- Post-Performance Cash.~~

~~(1) Post-performance cash can only be issued to the state-approved motion picture company who submits the motion picture incentive application and is approved by the office with advice from the Board.~~

]

R357-5-10[~~9~~]8. Request for Incentive Amendment.

(1) A motion picture company may request an incentive amendment only under the conditions prescribed by the Office.

(2) Amendments will be reviewed and approved by the UFC on a case by case basis with a written explanation for the approval or denial provided to the applicant.

KEY: economic development, motion picture, digital media, new state revenue
Date of Enactment or Last Substantive Amendment: [~~July 9, 2018~~]2019
Notice of Continuation: June 9, 2016
Authorizing, and Implemented or Interpreted Law: 63N-8-104

Governor, Economic Development
R357-16a
Restoration Recreation Infrastructure Grant Program Rule

NOTICE OF PROPOSED RULE

(New Rule)
DAR FILE NO.: 44174
FILED: 11/01/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: S.B. 249, passed by the Legislature during the 2019 General Session, created the Restoration Recreation Infrastructure Grant Program (Program). The new statutory language permits the office to promulgate rules to administer the Program. The purpose of this rule filing is to clarify the standards for participation in the Program.

SUMMARY OF THE RULE OR CHANGE: Section R357-16a-102 creates definitions that will be used to administer the Program. Section R357-16a-103 references the authority granted in the statutory language that permits rulewriting. Section R357-16a-104 outlines the application form and submission process. Section R357-16a-105 establishes the eligible entities. Section R357-16a-106 establishes the

eligibility criteria. Section R357-16a-107 outlines the method and formula for determining grant recipients. Section R357-16a-107 establishes the reporting and reimbursement requirements.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63N-9-302(3)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There is no aggregate anticipated cost or savings to the state budget. This rule is merely creating the requirements for the Restoration Recreation Infrastructure Grant Program that was created by the passing of S.B. 249 (2019).
♦ LOCAL GOVERNMENTS: There is no aggregate anticipated cost or savings to local governments because local governments are not required to comply with or enforce this rule.
♦ SMALL BUSINESSES: There is no aggregate anticipated cost or savings to small businesses because this proposed rule does not create new obligations for small businesses, nor does it increase the costs associated with any existing obligation. Participation in the Program is optional.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no aggregate anticipated cost or savings to persons other than small businesses, businesses, or local government entities because this proposed rule does not create new obligations for persons other than small businesses, businesses, or local government entities, nor does it increase the costs associated with any existing obligation.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons because participation in the Program is optional.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This new rule implements S.B. 249 (2019) which created the Restoration Recreation Infrastructure Grant Program. The purpose of this rule filing is to clarify the standards for participation in the Program. This rule will have no impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
GOVERNOR
ECONOMIC DEVELOPMENT
THIRD FLOOR
60 E SOUTH TEMPLE
SALT LAKE CITY, UT 84111
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Dane Ishihara by phone at 801-538-8865, or by Internet E-mail at dishihara@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/16/2019

THIS RULE MAY BECOME EFFECTIVE ON: 12/23/2019

AUTHORIZED BY: Val Hale, Executive Director

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	**FY 2020**	**FY 2021**	**FY 2022**
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
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 proposed rule filing is to clarify the standards for participation in the Program. There are no general regulations being promulgated by this rule because the Program is voluntary and does not require non-participants to do anything. There is no impact to businesses or persons general because this rule only applies to those who chose to participate in this Program in order to receive a grant.

The head of the Governor's Office of Economic Development, Val Hale, has reviewed and approved this fiscal analysis.

R357. Governor, Economic Development.
R357-16a. Restoration Recreation Infrastructure Grant Program Rule.
R357-16a-101. Title.
This rule is known as the "Restoration Recreation Infrastructure Grant Program Rule."

R357-16a-102. Definitions.

In addition to the terms defined in 63N-9-102 and R357-16-3, the following terms are defined as follows:

(1) "Developed campground" includes those which have been improved or developed from a moderate to a highly developed level.

(2) "Developed recreation site" means an area which has been improved or developed for recreation.

(3) "Developed trail" includes those that are considered developed, highly developed or fully developed trails which commonly have constructed features of either native or imported materials and incorporate route identification signage as needed for user reassurance.

(4) "Developed water recreation facilities" includes those with recreational facilities for water based recreation opportunities for the use, enjoyment and safety of visitors.

(5) "OOR" means the Utah Office of Outdoor Recreation.

(6) "Partner" means two or more entities collaborating with a common interest or goal in restoring or rehabilitating recreational infrastructure.

R357-16a-103. Authority.

This rule is adopted by OOR under the authority of Subsection 63N-9-302 (3).

R357-16a-104. Application Form and Submission Process.

(1) The application will be provided by OOR and contain the following content:

(a) general submission instructions;

(b) grants available to be claimed;

(c) criteria for qualification of a grant;

(d) instructions regarding a project description including timeline;

(e) instructions for providing a budget for total project cost, highlight of funds already procured for the project; and an itemized accounting showing planned use of the grant funds being requested;

(f) instructions for reporting project impacts including community and economic impacts;

(g) the application scoring system;

(h) any required deadlines, reports, and relevant timelines; and

(i) all required documents and information necessary for verification and approval of the application.

(2)(a) The application shall be created in an electronic form available to the public on OOR's website; and

(b) shall be available in paper upon request.

(4) To be considered for review an application must be received by OOR on or before the specified deadline in the application.

(5) Staff will review applications for completeness.

R357-16a-105. Eligible Entities.

(1) Grants may be awarded to the following entities within the state of Utah:

(a) non-profit corporations physically located within the State classified under 501 (c);

(b) municipalities;

(c) counties; and

(d) tribal governments.

(2) For projects on Federal or State lands, grant applicants must be partnered with the appropriate public land management agency for projects on those lands. Such partners may include.

(3) For-profit entities may not receive a recreation restoration infrastructure grant.

R357-16a-106. Recreation Restoration Eligibility Criteria.

(1) Budget/Costs/Matching Requirements: The Office will not fund more than 50% of the proposed project's eligible costs. The grant recipient and/or their partners shall provide matching funds having a value equal to or greater than the amount of the infrastructure grant.

(2) The maximum grant request is dependent on available annual funds and will be outlined in the grant application.

(3) Non-profit corporation applicants may provide an in-kind match in lieu of cash, provided applicant partners provide the necessary cash match to qualify for the match requirement.

(4) Up to 50% of the grant recipient's match may be provided through an in-kind contribution by the grant recipient, if:

(a) approved by the executive director after consultation with the director and the advisory committee;

(b) the in-kind donation meets the requirements for an eligible match; and

(d) the in-kind donation is for services or materials that are directly related to the construction of the project.

(5) Matching requirements, eligible and ineligible matching costs, and other matching funding requirements will be provided in the grant application.

(6) At least 75% of the matching funds for the project must be secured in order for the application to be considered.

(7) Recreation restoration infrastructure projects are limited to projects that are for the reconstruction, rehabilitating, replacing, and restoration of existing recreation infrastructure to meet visitor needs.

(8) Projects that are exclusively for the construction of new infrastructure are not eligible, however projects in which a minor portion of project funds are for the construction of new infrastructure in conjunction with a restoration project may be considered.

(9) Project sites that are primitive or semi-primitive are not eligible.

(10) Rehabilitation projects shall include those in which an existing trail is re-routed for sustainability or a campsite is moved.

(11) Eligible recreational infrastructure projects include:

(a) Trail improvements such as the realignment, rerouting, and reconstruction of existing or destroyed developed trail and trail systems;

(b) the updating, repair, replacement, or improvement of existing or destroyed developed trailside amenities;

(c) the restoration or rehabilitation of developed campground infrastructure to meet the needs of visitors and improve their safety;

(d) the restoration or rehabilitation of developed recreation site for day use sites which shall include such as picnic tables, fire pit/grill areas, shade structures including pavilions for larger groups, and restrooms; and

(e) The restoration or rehabilitation of developed water recreation facilities include: pier, dock, boat ramp.

R357-16a-107. Method and Formula for Determining Grant Recipients.

(1) OOR shall use a weighted scoring system to enable the advisory committee to analyze and advise on the awarding of grant and grant amounts. The scoring system shall:

(a) be made available in the application; and

(b) assess and value general categories.

(2) OOR shall distribute the grant applications among the advisory committee members and ensure that each application will be reviewed and scored by members of the advisory committee.

(3) OOR will use the average of the scores provided by the advisory committee members to create a prioritization matrix ranking the applications in descending order.

(4) OOR will provide a synopsis of each scored project to the advisory committee.

(5) In accordance with available funds, the advisory committee shall prioritize projects that the:

(a) advisory committee considers to be high demand outdoor recreation amenities or high priority trails; and

(b) data demonstrates that the project area receives or has received high visitation.

(6) The recommendations for grant awards will be forwarded to the executive director for final approval.

(7) OOR will notify applicants of the funding decision within two weeks of the final decision and:

(a) successful applicants will be notified of expected contractual requirements; and

(8) unsuccessful applicants will be notified of the rejection.

(9) Upon request an applicant may receive a redacted copy of the reviewers comments.

(10) An advisory committee member shall redact themselves from a project in which they have substantial interest.

R357-16a-108. Reporting and Reimbursement Requirements.

(1) Awarded entities will be required to submit, at minimum, the following documentation upon reimbursement request:

(a) a reimbursement request form on a format provided by the Office.

(b) copies of all invoices and evidence of payment (checks, bank statements or loan agreements) as well as records of volunteer labor or other in-kind donations for work completed on the project; and

(c) several photos that show the project is complete.

(d) a final report with the description of the project and data requested by the Office.

(2) Partial reimbursement payment may be made through the course of the terms of the contract, not to exceed 50% of expenses incurred during the development of the project. A request-for-funds form and itemization sheet will be required to be signed and submitted to receive the initial 50% of funds.

(3) Grant recipient shall provide a description and an itemized report detailing the expenditure of the grant or the intended expenditure of any grant funds that has not been spent.

(4) Project reports shall be provided at least every six months, and no later than 60 days after the grant agreement has expired.

(a) Each project report shall include:

(i) an accounting of project expenditures; and

(ii) assurances that all monies paid to the grant recipient were used for planning, construction, or improvements as describe in the recipient's grant application and grant agreement.

(5) Grant recipients will cooperate with reasonable requests for site visits during and after completion of the project.

KEY: economic development, recreation restoration, infrastructure grant, outdoor recreation
Date of Enactment or Last Substantive Amendment: 2019
Authorizing, and Implemented or Interpreted Law: 63N-9-302(3)

Governor, Economic Development
R357-27
Community Reinvestment Agency Report Rule

NOTICE OF PROPOSED RULE

(New Rule)
DAR FILE NO.: 44169
FILED: 10/31/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: S.B. 56, passed in the 2019 General Session, requires the Governor's Office of Economic Development to create a publicly accessible database to track certain information about each community reinvestment agency located within the state, and draft an administrative rule establishing a fee schedule. The purpose of this rule filing is to meet the administrative rulemaking requirement and establish a place holder for the fee schedule.

SUMMARY OF THE RULE OR CHANGE: Section R357-27-101 outlines the authority for drafting the rule. Section R357-27-102 reserves the section for a fee schedule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 17C-1-603(2)(b)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: Any cost to the state budget will be offset by fees paid by the community reinvestment agencies to administer the database.
♦ LOCAL GOVERNMENTS: This rule filing does not cause local governments to incur costs. This rule filing is merely a place holder for a fee schedule that will be established in the

future. Once the fee schedule is established the actual costs will be codified in a rule amendment.
♦ SMALL BUSINESSES: There is no aggregate anticipated cost or savings to small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no aggregate anticipated cost or savings to persons other than small businesses, businesses, or local government entities.

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

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: S.B. 56 (2019) passed and required the Governor's Office of Economic Development (Office) to create a publicly accessible database to track information about each community reinvestment agency by June 30, 2021. At this time, the Office is evaluating the administration of the database and is gathering the necessary data in preparation for launch prior to June 23, 2021. This rule filing is to meet the rulemaking requirement set forth in Subsection 17C-1-603(2)(b) and to reserve the section for which a fee schedule will be placed. After actual costs are established, a rule amendment will be filed to codify the fee schedule.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
GOVERNOR
ECONOMIC DEVELOPMENT
THIRD FLOOR
60 E SOUTH TEMPLE
SALT LAKE CITY, UT 84111
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Dane Ishihara by phone at 801-538-8865, or by Internet E-mail at dishihara@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/16/2019

THIS RULE MAY BECOME EFFECTIVE ON: 12/23/2019

AUTHORIZED BY: Val Hale, Executive Director

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2020	FY 2021	FY 2022
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
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 proposed rule filing is to clarify the standards for participation in the program. There are no general regulations being promulgated by this rule because the program is voluntary and does not require non-participants to do anything. There is no impact to businesses or persons general because this rule only applies to those who chose to participate in this program in order to receive a grant.

The head of the Governor's Office of Economic Development, Val Hale, has reviewed and approved this fiscal analysis.

R357. Governor, Economic Development.
R357-27. Community Reinvestment Agency Report Rule.
R357-27-101. Authority.
(1) Subsection 17C-1-603 (2) (b) requires the Governor's Office of Economic Development to make rules to establish a fee schedule for administration of the database.

R357-27-102. Fee Schedule.
(1) Reserved.

KEY: counties, public funds and accounts, reporting
Date of Enactment or Last Substantive Amendment: 2019

Authorizing, and Implemented or Interpreted Law: 17C-1-603(2)(b)

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

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 44168
FILED: 10/30/2019

RULE ANALYSIS

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

SUMMARY OF THE RULE OR CHANGE: This amendment includes a section on auto closure relative to revalidation.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 42 CFR 424.515 and Section 26-1-5 and Section 26-18-3 and Section 6401 of the Patient Protection and Affordable Care Act

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There is no impact to the state budget as this change only implements current revalidation policy. It neither affects member services nor provider reimbursement.
♦ LOCAL GOVERNMENTS: There is no impact on local governments because they neither fund nor provide services under the Medicaid program.
♦ SMALL BUSINESSES: There is no impact on small businesses as this change only implements current revalidation policy. It neither affects member services nor provider reimbursement.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no new impact on Medicaid providers and Medicaid members as this change only implements current revalidation policy. It neither affects member services nor provider reimbursement.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs to a single Medicaid provider or to a Medicaid member as this change only implements current revalidation policy. It neither affects member services nor provider reimbursement.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that this proposed rule amendment 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 12/16/2019

THIS RULE MAY BECOME EFFECTIVE ON: 12/23/2019

AUTHORIZED BY: Joseph Miner, MD, Executive Director

Appendix 1: Regulatory Impact Summary Table*

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

Other Persons	$0	$0	$0
Total Fiscal Benefits:	**$0**	**$0**	**$0**
Net Fiscal Benefits:	**$0**	**$0**	**$0**

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

Appendix 2: Regulatory Impact to Non-Small Businesses
Non-small businesses will not be impacted because this change only implements current policy for revalidation of Medicaid providers. It neither affects member services nor provider reimbursement.

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.
R414-23. Provider Enrollment.
R414-23-1. Introduction and Authority.

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

R414-23-2. Definitions.

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

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

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

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

R414-23-3. Revalidation Requirements.

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

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

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

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

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

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

R414-23-4. Auto Closure of Provider Contracts.

The Department may automatically close a provider contract for any of the following reasons:

(1) Failure to revalidate within the required five-year cycle as directed by 42 CFR 424.515;

(2) Expiration of professional license, or expiration of any license associated with the program for clinical laboratory improvement amendments (CLIA);

(3) Upon state or federal reporting of a deceased provider; or

(4) Failure to bill Medicaid for one or more years without notification.

KEY: Medicaid
Date of Enactment or Last Substantive Amendment: [~~September 17,~~]2019
Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3

Health, Health Care Financing, Coverage and Reimbursement Policy
R414-60
Medicaid Policy for Pharmacy Program

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 44172
FILED: 10/31/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to allow more than one provider to be reimbursed by Utah Medicaid for providing hemophilia clotting factor.

SUMMARY OF THE RULE OR CHANGE: This amendment removes provisions of the Hemophilia Disease Management Program as it has historically existed, as the sole-source contract for this program expires after December 31, 2019.

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

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The Department estimates net savings to be about $304,250 to its budget for this rule change and accompanying reimbursement methodology changes. The current sole-source provider of hemophilia factor (the University of Utah) will see a loss in revenue with

the termination of the sole-source contract, which accounts for the case management costs and the factor dispensing fee.
♦ LOCAL GOVERNMENTS: There is no impact on local governments because they do not fund or provide pharmacy services under the Medicaid program.
♦ SMALL BUSINESSES: Small businesses may see a gain in shared revenue as any willing pharmacy provider will be able to dispense hemophilia factor to Medicaid members.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Businesses may see a gain in shared revenue as any willing pharmacy provider will be able to dispense hemophilia factor to Medicaid members. Accountable Care Organizations (ACOs) may incur some additional administrative costs, to the extent additional case management is provided for this population.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The sole-source provider of clotting factor will see a loss in revenue with the termination of the sole-source provider contract, while a single ACO may incur some additional administrative costs for any additional case management done for this population.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: While one state-owned provider will see a loss in revenue with the termination of the sole-source contract, other businesses will see revenue increases when they dispense hemophilia factor to Medicaid members. After conducting a thorough analysis, it was determined that this proposed rule will result in an overall increase in revenue 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 12/16/2019

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

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	$304,250	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$40,000	$0	$0
Total Fiscal Costs:	**$344,250**	**$0**	**$0**
Fiscal Benefits			
State Government	$304,250	$0	$0
Local Government	$0	$0	$0
Small Businesses	$278,250	$0	$0
Non-Small Businesses	$26,000	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits:	**$608,500**	**$0**	**$0**
Net Fiscal Benefits:	**$264,250**	**$0**	**$0**

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

Appendix 2: Regulatory Impact to Non-Small Businesses

The three non-small business providers of pharmacy services may see a share of revenue of about $26,000, as any willing pharmacy provider may dispense hemophilia factor to Medicaid members.

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-60. Medicaid Policy for Pharmacy Program.
R414-60-5. Limitations.

(1) Limitations may be placed on drugs in accordance with 42 U.S.C. 1396r-8 or in consultation with the Drug Utilization Review

(DUR) Board. Limitations are included in the Pharmacy Services Provider Manual and attachments, incorporated by reference in Section R414-1-5, and may include:

(a) Quantity limits or cumulative limits for a drug or drug class for a specified period of time;

(b) Therapeutic duplication limits may be placed on drugs within the same or similar therapeutic categories;

(c) Step therapy, including documentation of therapeutic failure with one drug before another drug may be used; or

(d) Prior authorization.

(2) A covered outpatient drug that requires prior authorization may be dispensed for up to a 72-hour supply without obtaining prior authorization during a medical emergency.

(3) Drugs listed as non-preferred on the Preferred Drug List may require prior authorization as authorized by Section 26-18-2.4.

(4) Drugs may be restricted and are reimbursable only when dispensed by an individual pharmacy or pharmacies.

(5) Medicaid does not cover drugs not eligible for Federal Medical Assistance Percentages funds.

(6) Medicaid does not cover outpatient drugs included in the Medicare Prescription Drug Benefit-Part D for full-benefit dual eligible beneficiaries.

(7) Drugs provided to clients during inpatient hospital stays are not covered as an outpatient pharmacy benefit nor separately payable from the Medicaid payment for the inpatient hospital services.

(8) Medicaid covers only the following prescription cough and cold preparations meeting the definition of a covered outpatient drug:

(a) Guaifenesin with Dextromethorphan (DM) 600mg/30mg tablets;

(b) Guaifenesin with Hydrocodone 100mg/5mL liquid;

(c) Promethazine with Codeine liquid;

(d) Guaifenesin with Codeine 100mg/10mg/5mL liquid;

(e) Carbinoxamine with Pseudoephedrine 1mg/15mg/5mL liquid; and

(f) Carbinoxamine/Pseudoephedrine/DM 15mg/1mg/4mg/5mL liquid.

(9) Medicaid will pay for no more than a one-month supply of a covered outpatient drug per dispensing, except for the following:

(a) Medications included on the Utah Medicaid Three-Month Supply Medication List attachment to the Pharmacy Services Provider Manual may be covered for up to a three-month supply per dispensing. Medicaid clients eligible for Primary Care Network services under Rule R414-100 are not eligible to receive more than a one-month supply per dispensing.

(b) Prenatal vitamins for pregnant women, multiple vitamins with or without fluoride for children through five years of age, and fluoride supplements may be covered for up to a 90-day supply per dispensing.

(c) Medicaid may cover contraceptives for up to a three-month supply per dispensing.

(d) Medicaid may cover long-acting injectable antipsychotic drugs in accordance with Section R414-60-12 for up to a 90-day supply per dispensing.

(10) Medicaid will pay for a prescription refill only when 80% of the previous prescription has been exhausted, with the exception of narcotic analgesics. Medicaid will pay for a prescription refill for narcotic analgesics after 100% of the previous prescription has been exhausted.

(11) Medicaid does not cover the following drugs:

(a) Drugs not eligible for Federal Medical Assistance Percentages funds;

(b) Drugs for anorexia, weight loss or weight gain;

(c) Drugs to promote fertility;

(d) Drugs for the treatment of sexual or erectile dysfunction;

(e) Drugs for cosmetic purposes or hair growth;

(f) Vitamins; except for prenatal vitamins for pregnant women, vitamin drops for children through five years of age, and fluoride supplements;

(g) Over-the-counter drugs not included in the Utah Medicaid Over-the-Counter Drug List attachment to the Pharmacy Services Provider Manual;

(h) Drugs for which the manufacturer requires, as a condition of sale, that associated tests and monitoring services are purchased exclusively from the manufacturer or its designee;

(i) Drugs given by a hospital to a patient at discharge;

(j) Breast milk, breast milk substitutes, baby food, or medical foods, except for prescription metabolic products for congenital errors of metabolism;

(k) Drugs available only through single-source distribution programs, unless the distributor is enrolled with Medicaid as a pharmacy provider.

[~~(12) Medicaid may only cover hemophilia clotting factor when it is dispensed by a single-contracted provider in accordance with the Utah Medicaid State Plan.~~

]

R414-60-7. Reimbursement.

(1) A pharmacy may not submit a charge to Medicaid that exceeds the pharmacy's usual and customary charge.

(2) Covered-outpatient drugs are reimbursed at the lesser of the following:

(a) The Wholesale Acquisition Cost;

(b) The Federal Upper Limit assigned by the Centers for Medicare and Medicaid Services;

(c) The Utah Maximum Allowable Cost; and

(d) The submitted ingredient cost.

(e) If a prescriber obtains prior authorization for a brand-name version of a multi-source drug in accordance with 42 CFR 447.512 or if a brand-name drug is covered because a financial benefit will accrue to the State in accordance with Section 58-17b-606, then Medicaid will not apply the Utah Maximum Allowable Cost or Federal Upper Limit to the claim.

(f) Pharmacies participating in the 340B program and using medications obtained through the 340B program to bill Medicaid must submit the actual acquisition cost of the medication on the claim.

(g) Pharmacies that participate in the Federal Supply Schedule and use medications obtained through the schedule to bill Utah Medicaid, must submit the actual acquisition cost of the medication on the claim unless the claim is reimbursed as a bundled charge or All Inclusive Rate.

(h) Pharmacies that obtain and use medications at a nominal price must submit the actual acquisition cost of the medication on the claim.

(i) The Utah Maximum Allowable Cost (UMAC) for drugs for which the Centers for Medicare and Medicaid Services (CMS) publishes a National Average Drug Acquisition Cost (NADAC), is the NADAC itself. The UMAC for which CMS does not publish a NADAC is calculated by the Department.

(3) Dispensing fees are as outlined in the Utah State Plan, Attachment 4.19-B as approved by CMS and as follows:

(a) Medicaid will pay the lesser of the assigned dispensing fee or the submitted dispensing fee;

(b) Medicaid will only pay one dispensing fee per 24 days per covered outpatient drug per pharmacy.

(4) Medicaid will pay the lesser of the sum of the allowed amount for the covered outpatient drug and dispensing fee or the billed charges.

(5) Immunizations provided to Medicaid clients who are at least 19 years of age will be paid for the cost of the immunization plus a dispensing fee. Medicaid will pay the lesser of the allowed or submitted charges.

(6) Immunizations provided to Medicaid clients who are 18 years old or younger will only be eligible for a dispensing fee with no reimbursement for the immunization. Immunizations for Medicaid clients who are 18 years old or younger must be obtained through the Vaccines for Children program.

(7) Blood glucose test strips listed as preferred on the Utah Medicaid Preferred Drug List will be reimbursed at the lesser of the Wholesale Acquisition Cost with no dispensing fee or the billed charges.

[~~(8) In accordance with the Utah Medicaid State Plan, the Department may only reimburse a single-contracted provider for the purchase of hemophilia clotting factor.~~

]

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: May 1, 2018

Notice of Continuation: April 28, 2017

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

Health, Health Care Financing, Coverage and Reimbursement Policy

R414-60

Medicaid Policy for Pharmacy Program

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 44173

FILED: 10/31/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to implement, by rule, the Support for Patients and Communities Act passed by the United States Congress to promote opioid recovery and treatment, and to make other clarifications.

SUMMARY OF THE RULE OR CHANGE: This amendment implements safeguards for opioid use that include quantity restrictions, restrictions on morphine, restrictions on opioids used in combination with higher-risk medications, and strategies to manage antipsychotic medications prescribed to Medicaid members who are 19 years of age or younger. This amendment also clarifies the time limit for claims for covered outpatient drugs, clarifies coverage for cough and cold preparations, removes provisions for the Primary Care Network, clarifies the length of coverage for long-acting injectable antipsychotic drugs, and clarifies prescription drugs not covered by Medicaid.

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

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: There is no impact to the state budget because there are no additional program costs to implement opioid-use safeguards, and the other clarifications do not affect current or future appropriations.

♦ LOCAL GOVERNMENTS: There is no impact to local governments because they do not fund or provide pharmacy services under the Medicaid program.

♦ SMALL BUSINESSES: There is no impact to small businesses because there are no additional program costs to implement opioid-use safeguards, and the other clarifications do not affect current or future appropriations.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no impact to Medicaid providers and to Medicaid members because there are no additional program costs to implement opioid-use safeguards, and the other clarifications do not affect current or future appropriations.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no impact to a single Medicaid provider or to a Medicaid member because there are no additional program costs to implement opioid-use safeguards, and the other clarifications do not affect current or future appropriations.

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

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

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 12/16/2019

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

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 three non-small business providers of pharmacy services will see a fiscal impact, as there are no additional program costs to implement opioid-use safeguards, and the other clarifications in the rule do not affect current or future appropriations.

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.

R414-60. Medicaid Policy for Pharmacy Program.

R414-60-4. Program Coverage.

(1) Covered outpatient drugs eligible for Federal Medical Assistance Percentages funds are included in the pharmacy benefit; however, covered outpatient drugs may be subject to limitations and restrictions.

(2) In accordance with Subsection 58-17b-606(4), when a multi-source A-rated legend drug is available in the generic form, Medicaid will only reimburse for the generic form of the drug unless:

(a) reimbursing for the non-generic brand-name legend drug will result in a financial benefit to the State; or

(b) the treating physician demonstrates a medical necessity for dispensing the non-generic, brand-name legend drug.

(3) Prescriptions that are not executed electronically must be written on tamper-resistant prescription forms. Tamper-resistant prescription forms must include all of the following:

(a) One or more industry-recognized features designed to prevent unauthorized copying of a completed or blank prescription form;

(b) One or more industry-recognized features designed to prevent the erasure or modification of information written on the prescription by the prescriber; and

(c) One or more industry-recognized features designed to prevent the use of counterfeit prescription forms.

(d) Documentation by the pharmacy of verbal confirmation of a prescription not written on a tamper resistant prescription form by the prescriber or the prescriber's agent satisfies the tamper-resistant requirement. Documentation of the verbal confirmation must include the date, time, and name of the individual who verified the validity of the prescription.

(e) Pharmacies must maintain documentation of receipt of a prescription by a Medicaid client or the client's authorized representative. The documentation must clearly identify the covered outpatient drug received by the client, the date the covered outpatient drug was received, and who received the covered outpatient drug.

(f) Claims for covered outpatient drugs not dispensed to a Medicaid client or the client's authorized representative within 1[~~0~~]4 days must be reversed and any payment from Medicaid must be returned.

R414-60-5. Limitations.

(1) Limitations may be placed on drugs in accordance with 42 U.S.C. 1396r-8 or in consultation with the Drug Utilization Review (DUR) Board. Limitations are included in the Pharmacy Services Provider Manual and attachments, incorporated by reference in Section R414-1-5, and may include:

(a) Quantity limits or cumulative limits for a drug or drug class for a specified period of time;

(b) Therapeutic duplication limits may be placed on drugs within the same or similar therapeutic categories;

(c) Step therapy, including documentation of therapeutic failure with one drug before another drug may be used; or

(d) Prior authorization.

(2) A covered outpatient drug that requires prior authorization may be dispensed for up to a 72-hour supply without obtaining prior authorization during a medical emergency.

(3) Drugs listed as non-preferred on the Preferred Drug List may require prior authorization as authorized by Section 26-18-2.4.

(4) Drugs may be restricted and are reimbursable only when dispensed by an individual pharmacy or pharmacies.

(5) Medicaid does not cover drugs not eligible for Federal Medical Assistance Percentages funds.

(6) Medicaid does not cover outpatient drugs included in the Medicare Prescription Drug Benefit-Part D for full-benefit dual eligible beneficiaries.

(7) Drugs provided to clients during inpatient hospital stays are not covered as an outpatient pharmacy benefit nor separately payable from the Medicaid payment for the inpatient hospital services.

(8) Medicaid covers [~~only the following~~]prescription cough and cold preparations meeting the definition of a covered outpatient drug:

[~~(a) Guaifenesin with Dextromethorphan (DM) 600mg/30mg tablets;~~

~~(b) Guaifenesin with Hydrocodone 100mg/5mL liquid;~~

~~(c) Promethazine with Codeine liquid;~~

~~(d) Guaifenesin with Codeine 100mg/10mg/5mL liquid;~~

~~(e) Carbinoxamine with Pseudoephedrine 1mg/15mg/5mL liquid; and~~

~~(f) Carbinoxamine/Pseudoephedrine/DM 15mg/1mg/4mg/5mL liquid.~~]

(9) Medicaid will pay for no more than a one-month supply of a covered outpatient drug per dispensing, except for the following:

(a) Medications included on the Utah Medicaid Three-Month Supply Medication List attachment to the Pharmacy Services Provider Manual may be covered for up to a three-month supply per dispensing.[~~Medicaid clients eligible for Primary Care Network services under Rule R414-100 are not eligible to receive more than a one-month supply per dispensing.~~]

(b) Prenatal vitamins for pregnant women, multiple vitamins with or without fluoride for children through five years of age, and fluoride supplements may be covered for up to a [~~90-day~~]three-month supply per dispensing.

(c) Medicaid may cover contraceptives for up to a three-month supply per dispensing.

(d) Medicaid may cover long-acting injectable antipsychotic drugs in accordance with Section R414-60-12 for up to a [~~90-day~~]three-month supply per dispensing.

(10) Medicaid will pay for a prescription refill only when 80% of the previous prescription has been exhausted, with the exception of narcotic analgesics. Medicaid will pay for a prescription refill for narcotic analgesics after 100% of the previous prescription has been exhausted.

(11) Medicaid does not cover the following drugs:

[~~(a) Drugs not eligible for Federal Medical Assistance Percentages funds;~~

] ([~~b~~]a) Drugs for[~~ anorexia,~~]weight loss;[~~ or weight gain;~~]

([e]b) Drugs to promote fertility;

([~~d~~]c) Drugs for the treatment of sexual [~~or erectile~~] dysfunction;

([e]d) Drugs for cosmetic purposes;[~~ or hair growth;~~]

([~~f~~]e) Vitamins; except for prenatal vitamins for pregnant women, vitamin drops for children through five years of age, and fluoride supplements;

([g]f) Over-the-counter drugs not included in the Utah Medicaid Over-the-Counter Drug List attachment to the Pharmacy Services Provider Manual;

([~~h~~]g) Drugs for which the manufacturer requires, as a condition of sale, that associated tests and monitoring services are purchased exclusively from the manufacturer or its designee;

([~~i~~]h) Drugs given by a hospital to a patient at discharge;

([~~j~~]i) Breast milk, breast milk substitutes, baby food, or medical foods,[~~, except for p~~]Prescription metabolic products for congenital errors of metabolism are covered through the Durable Medical Equipment benefit;

([~~k~~]j) Drugs available only through single-source distribution programs, unless the distributor is enrolled with Medicaid as a pharmacy provider.

(12) Opioid claims used for the treatment of non-cancer pain are subject to limitations or restrictions set forth by the department such as:

(a) Initial fill limits;

(b) Monthly limits;

(c) Quantity limits;

(d) Additional limits in children and pregnant women;

(e) Morphine Milligram Equivalents (MME) and cumulative Morphine Equivalents Daily (MED) limits; or

(f) Concurrent use of opioids with high-risk drugs as defined by the Division of Medicaid and Health Financing.

(13) Antipsychotic medications prescribed to Medicaid members who are 19 years of age or younger are limited as follows:

(a) No use of multiple antipsychotic drugs;

(b) No off-label use;

(c) No use outside established age guidelines; and

(d) No doses higher than FDA recommendations.

(14) Exceptions may be granted as appropriate through the prior authorization process.

KEY: Medicaid
Date of Enactment or Last Substantive Amendment: [~~May 1, 2018~~]2019
Notice of Continuation: April 28, 2017
Authorizing, and Implemented or Interpreted Law: 26-18-3; 26-1-5

Health, Health Care Financing, Coverage and Reimbursement Policy

R414-302

Eligibility Requirements

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 44185
FILED: 11/01/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to implement H.B. 460, passed during the 2019 General Session, and to implement provisions of the Support for Patients and Communities Act, passed by the 115th Congress.

SUMMARY OF THE RULE OR CHANGE: This amendment implements a suspension of Medicaid coverage for incarcerated individuals, but neither denies nor terminates their eligibility.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 42 U.S.C 1396a(84)(A) and Section 26-1-5 and Section 26-18-3

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There is no impact to the state budget because the suspension of Medicaid coverage neither affects current nor future appropriations.
♦ LOCAL GOVERNMENTS: There is no impact to local governments because they neither fund Medicaid services nor determine eligibility under the Medicaid program.
♦ SMALL BUSINESSES: There is no impact to small businesses because the suspension of Medicaid coverage neither affects current nor future appropriations.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no impact to Medicaid providers and to Medicaid members because the suspension of Medicaid coverage neither affects current nor future appropriations.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no impact to a single Medicaid provider or to a Medicaid member because the suspension of Medicaid coverage neither affects current nor future appropriations.

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

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

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 12/16/2019

THIS RULE MAY BECOME EFFECTIVE ON: 12/23/2019

AUTHORIZED BY: Joseph Miner, MD, Executive Director

Appendix 1: Regulatory Impact Summary Table*

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

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

Appendix 2: Regulatory Impact to Non-Small Businesses
None of the approximate 27,000 non-small business providers of Medicaid services will be impacted because the suspension of Medicaid coverage neither affects current nor future appropriations.

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.
R414-302. Eligibility Requirements.
R414-302-6. Residents of Institutions.

(1) For purposes of institutions, the definitions in 42 CFR 435.1010 apply.

(2) An individual who resides in a halfway house may receive Medicaid coverage if the halfway house meets the following criteria:

(a) The halfway house allows the individual to work outside the facility;

(b) The halfway house allows the individual to use community facilities at will, such as libraries, grocery stores, recreation areas, or schools; and

(c) The halfway house allows the individual to seek health care treatment in the community to the same extent as other Medicaid enrollees.

(3) The Department does not consider an individual who resides in a temporary shelter for a limited period of time as a resident of an institution.

(4) Individuals who are inmates of public institutions are not eligible for Medicaid coverage. As described in Section R414-308-10, individuals who are incarcerated will not be denied Medicaid eligibility nor will their cases be closed, but their cases will be placed in a suspended status.

(5) Individuals who reside in an institution for mental disease (IMD) are not eligible for Medicaid coverage with the following exceptions:

(a) Individuals 65 years of age or older;

(b) Individuals under 22 years of age who receive inpatient psychiatric services as described in 42 CFR 440.160; and

(c) Individuals who reside in an IMD that is licensed as a Substance Use Disorder (SUD) residential treatment program and are receiving treatment for an SUD.

KEY: state residency, citizenship, third party liability, Medicaid
Date of Enactment or Last Substantive Amendment: [~~May 8, 2018~~|2019]
Notice of Continuation: January 8, 2018
Authorizing, and Implemented or Interpreted Law: 26-18-3

Health, Health Care Financing, Coverage and Reimbursement Policy
R414-308
Application, Eligibility Determinations and Improper Medical Assistance

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 44184
FILED: 11/01/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to implement H.B. 460, passed during the 2019 General Session, and to implement provisions of the Support for Patients and Communities Act, passed by the 115th Congress.

SUMMARY OF THE RULE OR CHANGE: This amendment implements a suspension of Medicaid coverage for incarcerated individuals, but neither denies nor terminates their eligibility.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 42 U.S.C 1396a(84)(A) and Section 26-1-5 and Section 26-18-3

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There is no impact to the state budget because the suspension of Medicaid coverage neither affects current nor future appropriations.
♦ LOCAL GOVERNMENTS: There is no impact to local governments because they neither fund Medicaid services nor determine eligibility under the Medicaid program.
♦ SMALL BUSINESSES: There is no impact to small businesses because the suspension of Medicaid coverage neither affects current nor future appropriations.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no impact to Medicaid providers and to Medicaid members because the suspension of Medicaid coverage neither affects current nor future appropriations.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no impact to a single Medicaid provider or to a Medicaid member because the suspension of Medicaid coverage neither affects current nor future appropriations.

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

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
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 12/16/2019

THIS RULE MAY BECOME EFFECTIVE ON: 12/23/2019

AUTHORIZED BY: Joseph Miner, MD, Executive Director

Appendix 1: Regulatory Impact Summary Table*

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

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

Appendix 2: Regulatory Impact to Non-Small Businesses
None of the approximate 27,000 non-small business providers of Medicaid services will be impacted because the suspension of Medicaid coverage neither affects current nor future appropriations.

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.
R414-308. Application, Eligibility Determinations[~~and~~], Improper Medical Assistance, and Suspension of Benefits.
R414-308-2. Definitions.

(1) The definitions in Rules R414-1 and R414-301 apply to this rule.

(2) In addition, the following definitions apply:

(a) "Due date" means the date that a recipient is required to report a change or provide requested verification to the eligibility agency.

(b) "Eligibility review" means a process by which the eligibility agency reviews current information about a recipient's circumstances to determine whether the recipient is still eligible for medical assistance.

(c) "Open enrollment" means a period of time when the eligibility agency accepts applications.

(d) "Suspension of Benefits" means a period of time when an incarcerated individual is still Medicaid eligible, but loses Medicaid coverage.

R414-308-10. Suspension of Benefits.

Individuals who are inmates of a public institution will not be closed or denied Medicaid eligibility, but placed in a suspended status. The following apply to suspension of benefits:

(1) Suspension of benefits applies to all Medicaid coverage groups;

(2) All factors of eligibility must be met to be suspended;

(3) Reviews must be completed for all individuals in a suspended status, with the exception of an individual who is under 21 years of age, or eligible for the Former Foster Care program.

KEY: public assistance programs, applications, eligibility, Medicaid
Date of Enactment or Last Substantive Amendment: [~~May 8, 2018~~]2019
Notice of Continuation: January 8, 2018
Authorizing, and Implemented or Interpreted Law: 26-18

Human Services, Administration
R495-879
Parental Support for Children in Care

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 44151
FILED: 10/28/2019

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The reasons for the changes to this rule include: 1) the requesting agency does not need to wait for an order to be established prior to requesting a waiver if they intend to waive the support for both parents; 2) the Office of Recovery Services (ORS) will no longer be part of the process when

determining good cause; and 3) sections regarding in-kind support and extended visitation have been removed from this rule.

SUMMARY OF THE RULE OR CHANGE: Rule R495-879 is updated so that ORS is no longer required to establish an order (or paternity) if the requesting agency intends to waive support for both parents. This rule is also updated to remove ORS from the process for determining good cause, and the sections regarding in-kind support and extended visitation were removed completely.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-1-111 and Section 62A-11-302 and Section 62A-15-607 and Section 62A-4a-114 and Section 62A-5-109 and Section 63G-4-102 and Section 78A-6-104 and Section 78A-6-1106 and Section 78B-12-201 and Section 78B-12-219 and Section 78B-12-301 and Section 78B-12-302 and Sections 78B-12-203 through 216

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: Amendments being made to this rule will affect the process that ORS uses to determine good cause. For Fiscal Year (FY) 2017-2018, ORS did 53 waivers; for FY 2018-2019, ORS did 43 waivers; so far for FY 2019-2020, ORS has done 11 waivers (on pace to work 52 waivers). This averages out to be 49 waivers per year. Each waiver currently takes approximately 60 minutes to review, research, and complete. ORS will still need to process requests, which should take at most 15 minutes. Eliminating the need for ORS to work these waivers will save the state. Time spent on processing these requests will save the state approximately $1,148.44 per year.
♦ LOCAL GOVERNMENTS: Administrative rules of the ORS do not apply to local governments. This rule outlines ORS's responsibilities in regards to children in the care or custody of the state, and includes the process for requesting agencies to waive child support due to good cause. Therefore, there are no anticipated costs or savings for local governments due to these amendments.
♦ SMALL BUSINESSES: Due to the nature of this amendment and in regards to how it will impact ORS, there are no anticipated costs or savings to small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Due to the nature of this amendment and in regards to how it will impact ORS, there are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities.

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

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that these rule changes will result in a fiscal savings to the ORS.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HUMAN SERVICES
ADMINISTRATION
DHS ADMINISTRATIVE OFFICE
MULTI STATE OFFICE BUILDING
195 N 1950 W
SALT LAKE CITY, UT 84116
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Casey Cole by phone at 801-741-7523, by FAX at 801-536-8509, or by Internet E-mail at cacole@utah.gov
♦ Jonah Shaw by phone at 801-538-4219, by FAX at 801-538-3942, or by Internet E-mail at jshaw@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/16/2019

THIS RULE MAY BECOME EFFECTIVE ON: 12/23/2019

AUTHORIZED BY: Ann Williamson, Executive Director

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	**FY 2020**	**FY 2021**	**FY 2022**
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$1,281.25	$1,148.44	$1,148.44
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits:	**$1,281.25**	**$1,148.44**	**$1,148.44**

Net Fiscal Benefits:	**$1,281.25**	**$1,148.44**	**$1,148.44**

***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 anticipated costs or savings for non-small businesses due to the amendments made to this rule. Rule R495-879 outlines the Office of Recovery Services' responsibilities in regards to children in the care or custody of the state, and includes the process for requesting agencies to waive child support due to good cause. Furthermore, it is not anticipated that there be any impact via these amendments to non-small businesses.

R495. Human Services, Administration.
R495-879. Parental Support for Children in Care.
R495-879-1. Authority and Purpose.

(1) The Department of Human Services is authorized to create rules necessary for the provision of social services by Section 62A-1-111.

(2) The purpose of this rule is to provide information to parents relating to the establishment and enforcement of child support when a child is placed in an out-of-home program.

R495-879-2. Child Support Liability.

The Office of Recovery Services (ORS) will establish and enforce child support obligations against parents whose children are in out-of-home placement programs administered by the Department of Human Services or Department of Health. The department shall consider fees for outpatient and day services separate from child support payments. Establishment and enforcement of child support shall be pursuant to the Uniform Civil Liability for Support Act, Title 78B, Chapter 12; Child Support Services Act, 62A-11-301 et seq.; Support and expenses of child in custody of an individual or institution, 78A-6-1106.

R495-879-3. Support Guidelines.

Child support obligations shall be calculated in accordance with Child Support Guidelines, Sections 78B-12-201, 78B-12-203 through 78B-12-216, 78B-12-219, 78B-12-301, 78B-12-302.

R495-879-4. Establishing an Order.

ORS may modify and establish child support orders through the Child Support Services Act, 62A-11-301 et seq.; Administrative Procedures Act, Section 63G-4-102 et seq.; Jurisdiction - Determination of Custody questions by Juvenile Court, Subsection 78A-6-104; and in accordance with R527-200.

R495-879-5. Good Cause [~~Deferral and~~]Waiver Request.

(1) A waiver request is appropriate if:

(a) The order is established and the requesting division does not intend to waive the child support for both parents. (The order does not need to be established prior to requesting the waiver if the requesting division intends to waive the child support for both parents);

(b) The child support is being collected on behalf of the state; and

(c) Child support collections interfere with family reunification efforts or [~~If collections interfere with family reunification, a division may, using the Good Cause Deferral/Waiver (form 602), request a deferral or waiver of arrears payments once a support order has been established. The request may be applied to current support~~]when an undue hardship is created by an unpreventable loss of income to the present family. A loss of income may include [~~non-payment~~]non-payment of child support from the other parent for the children at home, loss of employment, or loss of monthly pension or annuity payments.

(2) The request shall be initiated by the responsible case worker and forwarded to his or her supervisor, regional director, division director/superintendent, or designee for approval.

([~~2~~]3) After a support order has been established, if required, the Good Cause [~~Deferral and~~]Waiver request may be denied or approved by the [~~referring~~]requesting agency at any stage in the process. The request shall not be approved when it proposes actions that are contrary to state or federal law. Once the waiver has been approved at all levels in the [~~referring~~]requesting agency, the division director (or designee) shall send the waiver to the ORS director (or designee)[~~- for review and decision. If the requesting agency disagrees with the ORS director's (or designee's) decision, the request may be referred to the Executive Director of the Department of Human Services for a final decision. The requesting agency will notify the family of the final decision. The request shall not be approved when it proposes actions that are contrary to state or federal law~~].

(4) The ORS director (or designee) will review the waiver request, and if appropriate, ORS will cease collection efforts and close the child support cases intended to reimburse the state for time in custody. ORS will notify the caseworker for the requesting agency that the waiver has been processed. The requesting agency will notify the family of the final decision.

[~~**R495-879-6. In-Kind Support.**~~

~~(1) ORS may accept in-kind support after the support amount has been established, based on the parent's service to the program in which the child is placed. The service provided by a parent must be approved by the director of the division or the superintendent of the institution responsible for the child's care. The approval should be based on a monetary savings or an enhancement to a program. If geographical distances prohibit direct service, then the division director or superintendent may approve support services for in-kind support that do not directly offset costs to the agency, but support the overall mission of the agency. For example, a parent with a child receiving services at the Utah State Hospital (USH) may provide services to a local mental health center with the approval of the USH superintendent.~~

~~(2) A memorandum of understanding shall be signed by the division/institution and the parent specifying the type, length, and dollar value of service. Verification of the service hours worked must be provided by the division/institution to ORS (using Form 603) within 10 days after the end of the month in which the service was performed. The verification shall include the dates the service was~~

~~performed, the number of hours worked, and the total credit amount earned. The in-kind service allowed shall be applied prospectively up to the current support ordered amount. Unless approved by the director of the Department, in-kind support approved by one division/institution shall not be used to reduce child support owed to another division/institution. In-kind support shall not be approved when it proposes actions that are contrary to state or federal law.~~

~~R495-879-7. Extended Visitation During The Year.~~

~~A rebate shall be granted to a parent for support paid when a child's overnight visits equal 25% or more of the service period. The rebate will only be provided when the service period lasts six months or more. The rebate will be proportionate to the number of days at home compared to the number of days in care. One continuous 24-hour period equals one day.~~]

R495-879-[8]6. Child Support and Adoption Assistance.

ORS will establish and enforce child support obligations for parents who are currently receiving adoption assistance or who have received adoption assistance from this state or any other state or jurisdiction, for children who are in the custody of the state, in accordance with Sections 78A-6-1106, 78B-12-106, R495-879-2 and R495-883-3. If an order for support does not currently exist, [~~the department~~]ORS will establish a monthly child support obligation[~~ prospectively on existing cases~~]. When establishing a child support obligation, ORS will not include the adoption assistance amount paid to the family in determining the family's income, pursuant to Section 78B-12-207.

KEY: child support, custody of children, good cause
Date of Enactment or Last Substantive Amendment: [~~February 7, 2011~~]2019
Notice of Continuation: July 17, 2018
Authorizing, and Implemented or Interpreted Law: 62A-1-111(16); 62A-4a-114; 62A-5-109(1); 62A-11-302; 62A-15-607; 63G-4-102; 78A-6-104; 78A-6-1106; 78B-12-106; 78B-12-201; 78B-12-203 through; 78B-12-216; 78B-12-219; 78B-12-301; 78B-12-302

Human Services, Child and Family Services
R512-77
Child and Family Services Records

NOTICE OF PROPOSED RULE

(New Rule)
DAR FILE NO.: 44139
FILED: 10/17/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being created in response to S.B. 108, passed in the 2019 General Session.

SUMMARY OF THE RULE OR CHANGE: This rule is created to define the nature of confidential information to be safeguarded by Child and Family Services, as well as to provide access to information regarding payments for services offered by Child and Family Services.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-4a-102 and Section 62A-4a-112 and Title 63G Chapter 2

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: This proposed rule is not expected to have any fiscal impact on state government revenues or expenditures as the proposed language implements S.B. 108 (2019).
♦ LOCAL GOVERNMENTS: There is little or no impact to local governments due to this rule. This rule implements S.B. 108 (2019).
♦ SMALL BUSINESSES: There is little or no impact to small businesses due to this rule. This rule implements S.B. 108 (2019).
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is little or no impact to other persons due to this rule. This rule implements S.B. 108 (2019).

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons associated with implementing this rule because these changes are not fiscal in nature.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that this proposed rule will not result in a fiscal impact to businesses because this rule defines the nature of confidential information to be safeguarded by Child and Family Services, as well as provides access to information regarding payments for services offered by Child and Family Services.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Carol Miller by phone at 801-557-1772, by FAX at 801-538-3993, or by Internet E-mail at carolmiller@utah.gov
♦ Jonah Shaw by phone at 801-538-4219, by FAX at 801-538-3942, or by Internet E-mail at jshaw@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/16/2019

THIS RULE MAY BECOME EFFECTIVE ON: 12/23/2019

AUTHORIZED BY: Diane Moore, 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 rule is not expected to have a fiscal impact on non-small businesses' revenues or expenditures. It is only being created to define the nature of confidential information to be safeguarded by Child and Family Services, as well as to provide access to information regarding payments for services offered by Child and Family Services.

The head of the department of Human Services, Ann Williamson, has reviewed and approved this fiscal analysis.

R512. Human Services, Child and Family Services.

R512-77. Child and Family Services Records.

R512-77-1. Purpose and Authority.

(1) The purpose of this rule is to define the nature of confidential information to be safeguarded by Child and Family Services, as well as to provide access to information regarding payments for services offered by Child and Family Services.

(2) This rule is authorized by Sections 62A-4a-102 and 62A-4a-112.

R512-77-2. Definitions.

(1) "GRAMA" means the Government Records Access and Management Act detailed in Section 63G, Section 2.

(2) "Record" is defined as any document that is prepared, owned, received, or retained by Child and Family Services. Records may include photographs, film, audio and video recordings, digital recordings, electronic data, books, letters, papers, maps, plans, or any other documentary material. This also includes documents received or retained by the agency, even if the agency did not draft them. Records are not personal notes received or prepared by an employee of Child and Family Services in their private capacity, temporary drafts that are made for personal use, personal items listed in a daily calendar, or material owned by the individual in their private capacity.

R512-77-3. Release of Child and Family Services Records.

(1) Release of Child and Family Services records is governed by Section 63G, Section 2, GRAMA, as well as other specific statutory provisions.

R512-77-4. Examination of Child and Family Services Payments.

(1) An individual who is a taxpayer and resident of this state and who desires to examine a payment for services offered by Child and Family shall sign a statement using a form prescribed by Child and Family Services. That statement shall include the assertion that the individual is a taxpayer and a resident, and shall include a commitment that any information obtained will not be used for commercial or political purposes. No partial or complete list of names, addresses, or amounts of payment may be made by any individual, and none of that information may be removed from the offices of Child and Family Services.

(2) Based upon GRAMA and other specific statutory guidelines, Child and Family Services may not disclose the names or addresses of any child, youth, adult, or other person who has received services or who is identified in Child and Family Services' records.

(3) This rule does not prohibit Child and Family Services or its agents, or individuals, commissions, or agencies duly authorized for that purpose, from making special studies or from issuing or publishing statistical material and reports of a general character. This rule does not prohibit Child and Family Services or its representatives or employees from conveying or providing to local, state, or federal governmental agencies written information that would affect an individual's eligibility or ineligibility for financial service, or other beneficial programs offered by that governmental agency.

(4) Access to Child and Family Services program plans, guidelines, and records, as well as consumer records and data, is governed by Section 63G, Section 2, GRAMA and other specific statutory provisions.

KEY: child welfare, government records
Date of Enactment or Last Substantive Amendment: 2019
Authorizing, and Implemented or Interpreted Law: 62A-4a-102; 62A-4a-112; 63G-2

Human Services, Child and Family Services
R512-500
Kinship Services, Placement and Background Screening

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 44140
FILED: 10/17/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being changed in response to S.B. 47, passed in the 2019 General Session.

SUMMARY OF THE RULE OR CHANGE: These proposed changes bring this rule in-line with S.B. 47 (2019).

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-4a-102 and Section 62A-4a-105 and Section 62A-4a-209 and Section 78A-6-307 and Section 78A-6-307.5 and Section 78A-6-308

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: These proposed changes are not expected to have any fiscal impact on state government revenues or expenditures as the revised language brings this rule current to language in S.B. 47 (2019).
♦ LOCAL GOVERNMENTS: There is little or no impact to local governments due to these rule changes. These revisions bring this rule in-line with S.B. 47 (2019).
♦ SMALL BUSINESSES: There is little or no impact to small businesses due to this rule modification. These revisions bring this rule in-line with S.B. 47 (2019).
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is little or no impact to other persons due to the revisions made to this rule. These revisions bring this rule in-line with S.B. 47 (2019).

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons associated with implementing these changes because these changes are not fiscal in nature.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that these proposed changes will not result in a fiscal impact to small or non-small businesses because this rule establishes standards for kinship placement for a child who is in Child and Family Services custody, including Preliminary Placement, evaluation of kinship caregiver capacity for ongoing care, and background screening.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Carol Miller by phone at 801-557-1772, by FAX at 801-538-3993, or by Internet E-mail at carolmiller@utah.gov
♦ Jonah Shaw by phone at 801-538-4219, by FAX at 801-538-3942, or by Internet E-mail at jshaw@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/16/2019

THIS RULE MAY BECOME EFFECTIVE ON: 12/23/2019

AUTHORIZED BY: Diane Moore, Director

Appendix 1: Regulatory Impact Summary Table*

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

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

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

Appendix 2: Regulatory Impact to Non-Small Businesses
These proposed rule changes are not expected to have any fiscal impact for non-small businesses because non-small businesses have no responsibility for services offered by Child and Family Services and are therefore not affected by this rule.

The head of the Department of Human Services, Ann Williamson, has reviewed and approved this fiscal analysis.

R512. Human Services, Child and Family Services.
R512-500. Kinship Services, Placement and Background Screening.
R512-500-1. Purpose and Authority.

(1) The purpose of this rule is to establish standards for kinship placement for a child who is in Child and Family Services custody, including Preliminary Placement, evaluation of kinship caregiver capacity for ongoing care, and background screening.

(2) This rule is authorized by Sections 62A-4a-102, 62A-4a-209, 78A-6-307, and 78A-6-307.5.

R512-500-2. Definitions.

(1) "Abuse" is defined in Section 78A-6-105.

(2) "Child" is defined in Section 62A-4a-101.

(3) "Child and Family Services" means the Division of Child and Family Services, Department of Human Services.

(4) "Child and Family Team" has the same meaning as defined in Rule R512-301.

(5) "Friend" means an adult the child knows and is comfortable with, other than a non-custodial parent or relative as defined in Section 78A-6-307. A friend who is not licensed as a foster parent and who is designated a preference for care of a child by a [~~custodial~~]parent or guardian or the child, if the child is of sufficient maturity to articulate his or her wishes, and in accordance with Section 62A-4a-209, must be willing to become a licensed foster parent.

(6) "Kinship caregiver" means a non-custodial parent,[~~or~~] relative, or friend as defined in this section, who is selected for placement and care of a child in Child and Family Services custody. This may be a married couple, a single adult, or a relative who may be cohabiting.

(7) "Neglect" is defined in Section 78A-6-105.

(8) "Non-custodial parent" is a natural parent as defined in Section 78A-6-307 who is a biological or adoptive mother, an adoptive father, or a biological father who was married to the child's biological mother at the time the child was conceived or born, or who has had paternity established, who has not been granted legal custody of the child.

(9) "Non-relative" is defined in Section 62A-4a-209.

(10) "Preliminary Placement" means an out-of-home placement with a non-custodial parent, relative, or with a friend who is either a licensed foster parent or is willing to become a licensed foster parent, which is referred to in statute as an emergency placement with a non-custodial parent or relative as authorized in Section 62A-4a-209 or a post-shelter hearing placement with a non-custodial parent, relative, or friend as authorized in Section 78A-6-307.5.

(11) "Relative" is defined in Section 78A-6-307 as the child's "grandparent, great-grandparent, aunt, great-aunt, uncle, great-uncle, brother-in-law, sister-in-law, stepparent, first cousin, stepsibling, sibling of the child, a first cousin of the child's parent, or an adult who is an adoptive parent of the child's sibling." For a Native American child, relative also includes "extended family members" as defined by the Indian Child Welfare Act (ICWA), 25 USC 1903, which is "by the law or custom of the Native American child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Native American child's grandparent, aunt, or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent."

(12) "Severe type of child abuse or neglect" is defined in Section 62A-4a-1002.

(13) "Sibling" is defined as a child who has the same biological parent or adoptive parent as the child.

(14) "Substantiated" is defined in Section 62A-4a-101.

(15) "Supported" is defined in Section 62A-4a-101.

R512-500-3. Philosophy.

(1) All children need permanency through enduring relationships that provide stability, familiarity, and support for the culture of the child; support the child's sense of self based on existing attachments; provide for the child's safety and physical care; and connect the child to their past, present, and future through continuing family relationships. First priority is to maintain a child safely at home. However, if a child cannot safely remain at home, kinship care has the potential for providing these elements of permanency by virtue of the kin's knowledge of and relationship to the family and child.

(2) The family will be involved in placement decisions and will be participants of the Child and Family Team. All kinship work is done in the context of a Child and Family Team. Kinship care includes elements of child protection, in-home services, family preservation, and out-of-home care. When a child cannot safely remain home, kinship care is preferable to other out-of-home placements if the kinship caregiver can keep the child safe and appropriately meet the child's needs.

(3) The caregiver's willingness and ability to care for and keep the child safe are fundamental. The kinship caregiver must have or acquire knowledge of the child, be able to meet the child's needs, support reunification efforts, and be able to provide the child access to parents, siblings, and other family members through visits or caring for the child and siblings as a group.

(4) Ongoing assessment of the child's safety, permanence, and well-being is important to the stability and value of kinship care. Ongoing assessment of safety is based on the components of safety decision-making, which include threats of harm, vulnerabilities of the child, and protective capacities of the kinship caregiver and their support system.

(5) [~~Providing for kinship care in the Child and Family Services spectrum of services requires active efforts to identify and locate kin families with whom children may form or continue relationships at home or in temporary or permanent placements.~~]During the spectrum of services provided by Child and Family Services, there will be ongoing efforts to locate, notify, and engage kin, building and sustaining continued connections and relationships for the child.

(6) Support to kinship caregivers is essential to the success of the child's placement with the family and to the family's ability to respond to the needs of the child. As members of the Child and Family Team, kinship caregivers will [~~seek~~]receive support from other family members and from informal and formal supports to provide for the child.

R512-500-4. Preferences for Placement.

(1) The following order of preference shall be used when determining the placement of a child in the custody of Child and Family Services, and is subject to the child's best interest:

[~~(a) A non-custodial parent of the child in accordance with Section 78A-6-307;~~

~~(b) A relative of the child, including the adoptive parent of the child's sibling;~~

~~(c) A friend who is a licensed foster parent, designated by the custodial parent or guardian of the child;~~

~~(d) A friend not licensed as a foster parent, designated by the custodial parent or guardian of the child, who is willing to become licensed within six months of the child being placed with them;~~

~~(e) A former out-of-home care placement; and~~

~~(f) A shelter facility or other out-of-home care placement designated by Child and Family Services.~~]

(a) a non-custodial parent of the child;

(b) a relative of the child;

(c) subject to statute, a friend, if the friend is a licensed foster parent; and

(d) other placements that are consistent with the requirements of law.

(e) In determining whether a friend is a willing and appropriate temporary emergency placement for a child, Child and Family Services:

(i) is required to consider no more than one friend designated by each parent or legal guardian of the child and one friend designated by the child, if the child is of sufficient maturity to articulate the child's wishes in relation to a placement;

(ii) may limit the number of designated friends to two, one of whom shall be a friend designated by the child, if the child is of sufficient maturity to articulate the child's wishes in relation to a placement; and

(iii) shall give preference to a friend designated by the child, if:

(A) the child is of sufficient maturity to articulate the child's wishes; and

(B) Child and Family Services' basis for removing the child is sexual abuse of the child under Subsection 78A-6-105(51)(d).

(2) Preferential consideration given in accordance with Section 78A-6-307 to kinship caregivers or friends who are licensed or who become licensed expires 120 days from the date of the shelter hearing. After that time period has expired, a relative or friend who has not obtained custody or asserted an interest in the child may not be granted preferential consideration by Child and Family Services or the court. Prospective kinship caregivers or friends may be considered for placement after the 120 days has lapsed, if it is in the best interest of the child.

(3) A potential caregiver who meets the definition of friend and who is not a licensed foster parent must be [~~designated by the custodial parent or guardian to provide care for the child. The friend must be~~]willing to become a licensed foster parent[~~,~~]. The friend must be actively engaged in the process of becoming a licensed foster parent within 60 days of the child being placed with them, and must complete all requirements of the Department of Human Services, Office of Licensing to obtain a child-specific foster care license within six months of a child being placed with them.[~~in order for a child in the custody of Child and Family Services to be placed with them and to remain in the friend's care. Furthermore, i~~] If the child remains in the custody of Child and Family Services placed in the home of the friend, the friend must comply with all Office of Licensing requirements to receive ongoing licensure as a foster parent prior to the child-specific license expiring, or the child will be removed from the friend's care.

R512-500-5. Preliminary Placement.

(1) The requirements specified in Section 62A-4a-209 must be met for Preliminary Placement of a child with a kinship caregiver.

(2) Termination of parental rights does not terminate the right of a relative of the parents to seek placement and adoption of the child.

[~~(2)~~](3) [~~A decision to make a Preliminary Placement~~]The family will be involved in placement decisions and will be participants of the Child and Family Team. Considerations for the Preliminary Placement of a child with a kinship caregiver [~~will~~]shall include: [~~assessment of the kinship caregiver's willingness and ability to care for a child and to keep the child safe, a limited home inspection, and background screening.~~]

(a) Approved background screening requirements specified in Rule R512-500-7.

(b) Sufficient information to determine whether:

(i) the relative or friend has any history of abusive or neglectful behavior toward other children that may indicate or present a danger to this child;

(ii) the child is comfortable with the relative or friend;

(iii) the relative or friend recognizes the parent's history of abuse and is committed to protect the child;

(iv) the relative or friend is strong enough to resist inappropriate requests by the parent for access to the child, in accordance with court orders;

(v) the relative or friend is committed to caring for the child as long as necessary; and

(vi) the relative or friend can provide a secure and stable environment for the child.

[~~(3) A kinship caregiver must meet the background screening requirements specified in Rule R512-500-7.~~]

(4) Assessment of safety will be based on safety decision-making principles, which include:

(a) Potential threats of harm;

(b) Vulnerabilities of the child; and

(c) Protective capacities of the potential kinship caregiver and their support system.

(5) The limited home inspection specified in Section 62A-4a-209 is required for a non-custodial parent, relative, or friend. The limited home inspection is conducted in the home of the prospective kinship caregiver to determine if there are apparent safety risks in the home that present a potential threat of harm to the child. The limited home inspection determines if the following are met:

(a) The home is free from observable health and fire hazards.

(b) There are adequate sleeping arrangements to meet the specific needs of each child.

(c) Any firearms, ammunition, hazardous chemicals, and/or medications are secured and not accessible to children.

(6) References may be contacted to obtain input regarding placing the child with the potential kinship caregiver or information about other available relatives or friends who may care for the child.

R512-500-6. Evaluation of Capacity for Ongoing Care of a Child.

(1) The Child and Family Team will determine the most appropriate caregiver to meet the ongoing and permanency needs of the child.

(a) Since the Preliminary Placement is made in an emergency situation they may or may not be the most appropriate caregiver to meet the ongoing and permanency needs of the child.

(b) The ongoing caregiver may be the kinship caregiver who is the Preliminary Placement or may be a different prospective caregiver.

(2) Child and Family Services will evaluate with the prospective caregiver their capacity for ongoing care of the child as well as permanency if reunification efforts are not successful. The components of the evaluation process include:

(a) The child-specific home study, including:

(i) Results of the background screening specified in R512-500-7;

(ii) Obtaining positive written references from three different people known to the kinship caregiver expressing the referent's opinion about the family's ability to care for the child;

(iii) Physical and emotional ability of the kinship caregiver to provide adequate care for the child;

(iv) Understanding of family dynamics and how placement will impact relationships within the family;

(v) Ability to provide for the child's safety and well-being needs and to support a plan for permanency;

(vi) Analysis of the type of resources and support needed by the kinship caregiver to care for the child.

(vii) Ability of the home to meet required safety standards of the Office of Licensing.

(b) Providing information to the kinship caregiver to assist with considering options for ongoing care of the child, including:

(i) Educating the kinship caregiver of the expectations of caring for a child who is under the jurisdiction of the court.

(ii) Assessing the resources that may be available to assist the kinship caregiver in providing a stable placement for the child.

(iii) Becoming a licensed out-of-home care placement for the child.

(iv) Requesting temporary custody and guardianship from the court.

R512-500-7. Background Screening.

(1) Background Screening Procedure for Preliminary Placements.

(a) In order for a non-custodial parent, relative, or friend to be considered for Preliminary Placement of a child, background screening must be completed that meets the requirements of Sections 62A-4a-209, 78A-6-307, 78A-6-307.5, and 78A-6-308. If any non-relative adults live in the household, applicable background screening requirements in Sections 62A-4a-209, 78A-6-307, 78A-6-307.5, and 78A-6-308 must be met.

(b) A non-custodial parent or relative and all persons 18 years of age and older living in the household must provide the following information in order for background screening to be conducted:

(i) Full first, middle, last, maiden, alias, and all previous married names.

(ii) Social Security number, if a number has been issued.

(iii) Proof of identity verified by a government-issued photo identification.

(iv) Date of birth.

(2) Background Screening Procedure for Ongoing Care of a Child.

(a) As part of the evaluation of capacity for ongoing care of a child, in addition to background screening required for Preliminary Placement, anyone over the age of 18 years in the home must complete an FBI fingerprint-based criminal history records check.

(b) A Utah child abuse registry check will be completed or all persons over the age of 18 years residing in the home. If any person 18 years of age or older residing in the home has lived out of the state of Utah in the five years immediately preceding the date of the application, a child abuse and neglect registry check must be completed for any state in which the individual resided.

(c) All persons 18 years of age and older living in the household must provide the following information on a form provided by Child and Family Services in order for background screening to be conducted:

(i) Full first, middle, last, maiden, alias, and all previous married names.

(ii) Social Security number, if a number has been issued.

(iii) Proof of identity verified by a government-issued photo identification.

(iv) Date of birth.

(v) The potential kinship caregiver and applicable adults living in the household shall provide fingerprints from an authorized law enforcement agency or designated electronic scanning site.

(vi) If the applicant has lived outside of Utah in the five years preceding the date of the application, a list of the states the applicant has lived in will be provided.

KEY: child welfare, kinship

Date of Enactment or Last Substantive Amendment: [~~September 8, 2015~~|2019

Notice of Continuation: February 15, 2018
Authorizing, and Implemented or Interpreted Law: 62A-4a-102; 62A-4a-105; 62A-4a-209; 78A-6-307; 78A-6-307.5; 78A-6-308

Insurance, Administration
R590-76
Health Maintenance Organizations and Limited Health Plans

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 44176
FILED: 11/01/2019

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being revised to reflect citation changes to Title 31A, Chapter 8, after certain provisions were moved to Title 31A, Chapter 45, as a result of the H.B. 336, Health Reform Amendments, passed in the 2017 General Session. The revisions also reflect a change for the date for a contract or certificate of coverage to be delivered as a result of H.B. 39, Insurance Amendments, passed in the 2019 General Session, and make other minor changes.

SUMMARY OF THE RULE OR CHANGE: The changes clarify that this rule does not apply to an Health Maintenance Organization (HMO) contract that is subject to Rule R590-277; corrects references to Title 31A, Chapter 8; changes the timeframe for delivery of a group contract or evidence of coverage to be delivered within 90 days of the effective date of coverage; clarifies references to the Utah Department of Health; and updates severability clause to be consistent with more current rules.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 31A-2-201 and Title 31A, Chapter 8

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There is no anticipated cost or savings to the state budget because insurers are already complying with the provisions of this rule.
♦ LOCAL GOVERNMENTS: There is no anticipated cost or savings for local governments because the only affected persons are insurers, and they are already complying with the provisions of this rule.
♦ SMALL BUSINESSES: There is no anticipated cost or savings for small businesses because the only affected persons are insurers, and they are already complying with the provisions of this rule.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no anticipated cost or savings for any other persons because the only affected persons are insurers, and they are already complying with the provisions of this rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated compliance costs for any affected persons because the only affected persons are insurers, and they are already complying with the provisions of this rule.

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

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
INSURANCE
ADMINISTRATION
ROOM 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Steve Gooch by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at sgooch@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/16/2019

THIS RULE MAY BECOME EFFECTIVE ON: 12/23/2019

AUTHORIZED BY: Steve Gooch, Information Specialist

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
While this rule does affect non-small businesses, this rule change is not expected to have any fiscal impacts on non-small businesses' revenues or expenditures. This is because the non-small businesses in question, health insurers, are already complying with the provisions of this rule.

The head of the Insurance Department, Todd E. Kiser, has reviewed and approved this fiscal analysis.

R590. Insurance, Administration.
R590-76. Health Maintenance Organizations and Limited Health Plans.
R590-76-1. Authority.

This rule is issued pursuant to the authority set forth in Title 31A, Chapter 8, Health Maintenance Organizations (HMOs) and Limited Health Plans.

R590-76-2. Purpose.

The purpose of this rule is to implement Chapter 8 of Title 31A to assure the availability, accessibility and quality of services provided by HMOs and to provide reasonable standards for terms and provisions contained in HMO group and individual contracts and evidences of coverage.

R590-76-3. Applicability and Scope.

(1) This rule applies to all organizations defined in 31A-8-101([~~8~~]5). In the event of conflict between the provisions of this regulation and the provisions of any other regulation issued by the commissioner, the provisions of this regulation shall be controlling. This rule also applies to all HMO contracts covering individuals and groups issued or renewed and effective on or after January 1, 2003.

(2) Sections 4 and 5 of this rule do not apply to an HMO contract subject to R590-277, Managed Care Health Benefit Plan Policy Standards.

R590-76-4. HMO Definitions.

A group or individual contract and evidence of coverage delivered or issued for delivery to any person in this state by an HMO required to obtain a certificate of authority in this state shall contain definitions respecting the matters set forth below. The definitions shall comply with the requirements of this section. Definitions other than those set forth in this regulation may be used as appropriate providing that they do not contradict these requirements. As used in this regulation and as used in the group or individual contract and evidence of coverage:

(1) "Coinsurance" is the enrollee's cost-sharing amount expressed as a percentage of covered charges.

(2) "Copayment" means, other than coinsurance, the amount an enrollee must pay in order to receive a specific service that is not fully prepaid.

(3) "Deductible" means the amount an enrollee is responsible to pay out-of-pocket before the HMO begins to pay the costs or provide the services associated with treatment.

(4) "Directors" mean the executive director of Department of Health or his authorized representative, and the director of the Health Division of the Utah Insurance Department.

(5) "Eligible dependent" means any member of an enrollee's family who meets the eligibility requirements set forth in the contract.

(6) "Emergency care services" means services for an emergency medical condition as defined in 31A-22-627(3).

(a) Within the service area, emergency care services shall include covered health care services from non-affiliated providers only when delay in receiving care from the HMO could reasonably be expected to cause severe jeopardy to the enrollee's condition.

(b) Outside the service area, emergency care services include medically necessary health care services that are immediately required because of unforeseen illness or injury while the enrollee is outside the geographical limits of the HMO's service area.

(7) "Evidence of coverage" means a certificate or a statement of the essential features and services of the HMO coverage that is given to the subscriber by the HMO or by the group contract holder.

(8) "Facility" means an institution providing health care services or a health care setting, including but not limited to hospitals and other licensed inpatient centers, ambulatory surgical or treatment centers, skilled nursing centers, residential treatment centers, diagnostic, laboratory and imaging centers, and rehabilitation and other therapeutic health settings which operate within their specific licensures requirements.

(9) "Grievance" means a written complaint submitted in accordance with the HMO's formal grievance procedure by or on behalf of the enrollee regarding any aspect of the HMO relative to the enrollee.

(10) "Group contract" means a contract for health care services by which its terms limit eligibility to enrollees of a specified group.

(11) "Group contract holder" means the person to which a group contract has been issued.

(12) "Incidental coverage" means a contract or endorsement offered by an HMO that provides limited health plan benefits as defined in Subsection 31A-8-101([~~6~~]3)(a).

(13) "Individual contract" means a contract for health care services issued to and covering an individual. The individual contract may include coverage for dependents of the subscriber.

(14) "Medical necessity" or "medically necessary" means:

(a) Health care services or products that a prudent health care professional would provide to a patient for the purpose of

preventing, diagnosing or treating an illness, injury, disease or its symptoms in a manner that is:

(i) in accordance with generally accepted standards of medical practice in the United States;

(ii) clinically appropriate in terms of type, frequency, extent, site, and duration;

(iii) not primarily for the convenience of the patient, physician, or other health care provider; and

(iv) covered under the contract; and

(b) when a medical question-of-fact exists medical necessity shall include the most appropriate available supply or level of service for the individual in question, considering potential benefits and harms to the individual, and known to be effective.

(i) For interventions not yet in widespread use, the effectiveness shall be based on scientific evidence.

(ii) For established interventions, the effectiveness shall be based on:

(a) scientific evidence;

(b) professional standards; and

(c) expert opinion.

(15) "Out-of-area services" means the health care services that an HMO covers when its enrollees are outside of the service area.

(16) "Physician" means a duly licensed doctor of medicine or osteopathy practicing within the scope of the license.

(17) "Primary care physician" means a physician who supervises, coordinates, and provides initial and basic care to enrollees, and who initiates their referral for specialist care and maintains continuity of patient care.

(18) "Scientific evidence" means:

(a) scientific studies published in or accepted for publication by medical journals that meet nationally recognized requirements for scientific manuscripts and that submit most of their published articles for review by experts who are not part of the editorial staff; or

(b) findings, studies or research conducted by or under the auspices of federal government agencies and nationally recognized federal research institutes.

(c) Scientific evidence shall not include published peer-reviewed literature sponsored to a significant extent by a pharmaceutical manufacturing company or medical device manufacturer or a single study without other supportable studies.

(19) "Service area" means the geographical area within a 40-mile radius of the HMO's health care facility.

(20) "Subscriber" means an individual whose employment or other status, except family dependency, is the basis for eligibility for enrollment in the HMO, or in the case of an individual contract, the person in whose name the contract is issued.

R590-76-5. Requirements for HMO Contracts and Evidence of Coverage.

(1)(a) Individual contracts. Each subscriber shall be entitled to receive an individual contract and evidence of coverage in a form that has been filed with the commissioner.

(b) Group contracts. Each group contract holder shall be entitled to receive a group contract that has been filed with the commissioner.

(c) Group contracts, individual contracts and evidences of coverage shall be delivered or issued for delivery to subscribers or group contract holders within a reasonable time after enrollment, but not more than [~~30~~]90 days from the [~~later of the~~]effective date of coverage[~~or the date on which the HMO is notified of enrollment~~].

(2) HMO information. The group or individual contract and evidence of coverage shall contain the name, address and telephone number of the HMO, and where and in what manner information is available as to how services may be obtained. A telephone number within the service area for calls, without charge to members, to the HMO's administrative office shall be made available and disseminated to enrollees to adequately provide telephone access for enrollee services, problems or questions. The group or individual contract and evidence of coverage may indicate the manner in which the number will be disseminated rather than list the number itself.

(3) Eligibility requirements. The group or individual contract and evidence of coverage shall contain eligibility requirements indicating the conditions that shall be met to enroll. The forms shall include a clear statement regarding coverage of dependents and newborn children.

(4) Benefits and services within the service area. The group or individual contract and evidence of coverage shall contain a specific description of benefits and services available within the service area.

(5) Emergency care benefits and services. The group or individual contract and evidence of coverage shall contain a specific description of benefits and services available for emergencies 24 hours a day, 7 days a week, including disclosure of any restrictions on emergency care services. No group or individual contract and evidence of coverage shall limit the coverage of emergency services within the service area to affiliated providers only.

(6) Out-of-area benefits and services. Other than emergency care, if benefits and services are covered outside the service area, a group or individual contract and evidence of coverage shall contain a specific description of that coverage.

(7) Copayments, coinsurance, and deductibles. The group or individual contract and evidence of coverage shall contain a description of any copayments, coinsurance, or deductibles that must be paid by enrollees.

(8) Limitations and exclusions. The group or individual contract and evidence of coverage shall contain a description of any limitations or exclusions on the services or benefits, including any limitations or exclusions due to preexisting conditions or waiting periods.

(9) Claims procedures. The group or individual contract and evidence of coverage shall contain procedures for filing claims that include:

(a) any required notice to the HMO;

(b) any required claim forms, including how, when and where to obtain them;

(c) any requirements for filing proper proofs of loss;

(d) any time limit of payment of claims;

(e) notice of any provisions for resolving disputed claims, including arbitration; and

(f) a statement of restrictions, if any, on assignment of sums payable to the enrollee by the HMO.

(10) Enrollee grievance procedures and arbitration. In compliance with R590-76-8(4), the group or individual contract and evidence of coverage shall contain a description of the HMO's method for resolving enrollee grievances, including procedures to be followed by the enrollee in the event any dispute arises under the contract, including any provisions for arbitration.

(11) Extension and conversion of coverage. A group contract, and evidence of coverage shall contain a conversion provision which provides each enrollee the right to a conversion policy and/or extend coverage to a contract as set forth in Chapter 22 of Title 31A, Part VII.

(12) Coordination of benefits. The group or individual contract and evidence of coverage may contain a provision for coordination of benefits that shall be consistent with that applicable to other carriers in the jurisdiction. Any provisions or rules for coordination of benefits established by an HMO shall not relieve an HMO of its duty to provide or arrange for a covered health care service to an enrollee because the enrollee is entitled to coverage under any other contract, policy or plan, including coverage provided under government programs.

(13) Description of the service area. The group or individual contract and evidence of coverage shall contain a description of the service area.

(14) Entire contract provision. The group or individual contract shall contain a statement that the contract, all applications and any amendments thereto shall constitute the entire agreement between the parties. No portion of the charter, bylaws or other document of the HMO shall be part of the contract unless set forth in full in the contract or attached to it. However, the evidence of coverage may be attached to and made a part of the group contract.

(15) Term of coverage. The group or individual contract and evidence of coverage shall contain the time and date or occurrence upon which coverage takes effect, including any applicable waiting periods, or describe how the time and date or occurrence upon which coverage takes effect is determined. The contract and evidence of coverage shall also contain the time and date or occurrence upon which coverage will terminate.

(16) Cancellation or termination. The group or individual contract and evidence of coverage shall contain the conditions upon which cancellation or termination may be effected by the HMO, the group contract holder or the subscriber.

(17) Renewal. The group or individual contract and evidence of coverage shall contain the conditions for, and any restrictions upon, the subscriber's right to renewal.

(18) Reinstatement of group or individual contract holder. If an HMO permits reinstatement of a group or individual, the contract and evidence of coverage shall include any terms and conditions concerning reinstatement. The contract and evidence of coverage may state that all reinstatements are at the option of the HMO and that the HMO is not obligated to reinstate any terminated contract.

(19) Conformity with State Law. A group or individual contract and evidence of coverage delivered or issued for delivery in this state shall include a provision that states that any provision not in conformity with Chapter 8 of Title 31A, this regulation or any other applicable law or regulation in this state shall not be rendered invalid but shall be construed and applied as if it were in full compliance with the applicable laws and regulations of this state.

(20) Definitions. All definitions used in the group or individual contract and evidence of coverage shall be in alphabetical order.

R590-76-6. Unfair Discrimination.

An HMO shall not unfairly discriminate against an enrollee or applicant for enrollment on the basis of the age, sex, race, color, creed, national origin, ancestry, religion, marital status or lawful occupation of an enrollee, or because of the frequency of utilization of services by an enrollee. An HMO shall not expel or refuse to re-enroll any enrollee nor refuse to enroll individual members of a group on the basis of an individual's or enrollee's health status or health care needs, except for a policy which contains a lifetime policy maximum and such maximum has been reached. However, nothing shall prohibit an HMO from setting rates, establishing a schedule of charges in accordance with actuarially sound and appropriate data, or appropriately applying policy provisions in compliance with the Utah Insurance Code.

R590-76-7. HMO Services.

(1) Access to Care.

(a) An HMO shall establish and maintain adequate arrangements to provide health services for its enrollees, including:

(i) reasonable proximity to the business or personal residences of the enrollees so as not to result in unreasonable barriers to accessibility;

(ii) reasonable hours of operation and after-hours services;

(iii) emergency care services available and accessible within the service area 24 hours a day, 7 days a week; and

(iv) sufficient providers, personnel, administrators and support staff to assure that all services contracted for will be accessible to enrollees on an appropriate basis without delays detrimental to the health of enrollees.

(b) If a primary care physician is required in order to obtain covered services, an HMO shall make available to each enrollee a primary care physician and provide accessibility to medically necessary specialists through staffing, contracting or referral.

(c) An HMO shall have written procedures governing the availability of services utilized by enrollees, including at least the following:

(i) well-patient examinations and immunizations;

(ii) treatment of emergencies;

(iii) treatment of minor illness; and

(iv) treatment of chronic illnesses.

(2) Basic health care services. An HMO shall provide, or arrange for the provision of, as a minimum, basic health care services, which shall include the following:

(a) emergency care services;

(b) inpatient hospital services, meaning medically necessary hospital services including:

(i) room and board;

(ii) general nursing care;

(iii) special diets when medically necessary;

(iv) use of operating room and related facilities;

(v) use of intensive care units and services;

(vi) x-ray, laboratory and other diagnostic tests;

(vii) drugs, medications, biologicals;

(viii) anesthesia and oxygen services;

(ix) special nursing when medically necessary;

(x) physical therapy, radiation therapy and inhalation therapy;

(xi) administration of whole blood and blood plasma; and

(xii) short-term rehabilitation services;

(c) inpatient physician care services, meaning medically necessary health care services performed, prescribed, or supervised by

physicians or other providers including diagnostic, therapeutic, medical, surgical, preventive, referral and consultative health care services;

(d) Outpatient medical services, meaning preventive and medically necessary health care services provided in a physician's office, a non-hospital-based health care facility or at a hospital. Outpatient medical services shall include:

(i) diagnostic services;

(ii) treatment services;

(iii) laboratory services;

(iv) x-ray services;

(v) referral services;

(vi) physical therapy, radiation therapy and inhalation therapy; and

(vii) preventive health services, which shall include at least a range of services for the diagnosis of infertility, well-child care from birth, periodic health evaluations for adults, screening to determine the need for vision and hearing correction, and pediatric and adult immunizations in accordance with accepted medical practice;

(e) Coverage of inborn metabolic errors as required by 31A-22-623 and Rule R590-194, Coverage of Dietary Products for Inborn Errors of Amino Acid or Urea Cycle Metabolism, and benefits for diabetes as required by 31A-22-626 and Rule R590-200, Diabetes Treatment and Management.

(3) Out-of-area benefits and services. Other than emergency care, if the contract provides out-of-area services, they shall be subject to the same copayment, coinsurance, and deductible requirements set forth in R590-76-5(7).

(4)(a) An HMO may offer a contract or endorsement that provides incidental coverage.

(b) An incidental coverage contract or endorsement is exempt from the basic health care services and emergency care requirements set forth in this rule.

(c) An HMO offering an incidental benefit contract or endorsement may offer all of the basic health care services.

R590-76-8. Other HMO Requirements.

(1) Provider lists.

(a) An HMO shall provide its subscribers with a list of the names and locations of all of its providers no later than the time of enrollment or the time the group or individual contract and evidence of coverage are issued and upon reenrollment.

(b) Upon notification to an HMO that a provider is no longer affiliated, the HMO shall within 30 days:

(i) notify enrollees who are receiving ongoing care; and

(ii) update any applicable web site provider lists.

(c) Subject to the approval of the commissioner, an HMO may provide its subscribers with a list of providers or provider groups for a segment of the service area. However, a list of all providers shall be made available to subscribers upon request.

(d) Provider lists shall contain a notice regarding the availability of the listed primary care physicians. The notice shall be in not less than 12-point type and be placed in a prominent place on the list of providers. The notice shall contain the following or similar language:

"Enrolling in (name of HMO) does not guarantee services by a particular provider on this list. If you wish to receive care from specific providers listed, you should contact those providers to be sure that they are accepting additional patients for (name of HMO)."

(2) Description of the services area. An HMO shall provide its subscribers with a description of its service area no later than the time of enrollment or the time the group or individual contract and evidence of coverage are issued and upon request thereafter. If the description of the service area is changed, the HMO shall provide at such time a new description of the service area to its affected subscribers within 30 days.

(3) Copayments, coinsurance, and deductibles. An HMO may require copayments, coinsurance, or deductibles of enrollees as a condition for the receipt of health care services. Copayments, coinsurance, and deductibles shall be the only allowable charge, other than premiums, insurers may assess to subscribers, unless otherwise allowed by law.

(4) Grievance procedure. A grievance procedure in compliance with 31A-22-629 and Rule R590-203, Health Care Benefit Plans-Grievance and Voluntary Independent Review Procedures Rule, to resolve an adverse benefit determination, shall be established and maintained by an HMO to provide reasonable procedures for the prompt and effective resolution of written grievances.

(5) Provider contracts. All provider contracts must be on file and available for review by the commissioner and the director of the [~~UDOH~~]Utah Department of Health.

R590-76-9. Quality Assurance.

(1) Quality assurance plan.

(a) Each HMO shall develop a quality assurance plan. The plan shall be designed to objectively and systematically monitor and evaluate the quality and appropriateness of patient care, pursue opportunities to improve patient care, and resolve identified problems.

(b) Certification of quality assurance plan.

(i) A new HMO shall arrange and pay for a review and certification of its quality assurance plan no later than 18 months after receiving a Certificate of Authority and commencing operation.

(ii) An existing HMO shall arrange a pay for a review and certification of its quality assurance plan every three years unless required sooner by the certifying entity.

(iii) Reviews shall be conducted by the National Committee of Quality Assurance (NCQA), the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), the American Accreditation HealthCare Commission (URAC), formerly known as the Utilization Review Accreditation Commission, Health Insight, or other entities as approved by the commissioner. Reviews conducted for the federal government shall satisfy these requirements if the requirements of this subsection are met.

(iv) Each HMO shall arrange for the directors to receive a copy of the review findings, recommendations, and certification, or notice of non-approval, of the quality assurance plan. This material shall be sent directly from the certifying entity to the directors. Certification status and review materials will be maintained as a protected record by the directors.

(v) Each HMO shall implement clinical and procedural requirements made by the certifying entity after the findings are received by the HMO.

(c) Each year on or before July 1, an HMO shall file to the directors a written report of the effectiveness of its internal quality control. The report must include a copy of the HMO's quality assurance plan.

(2) Quality assurance audits. The commissioner may audit an HMO's quality control system. Such audit shall be performed by qualified persons designated by the commissioner.

(a) The HMO shall comply with reasonable requests for information required for the audit and necessary to:

(i) measure health care outcomes according to established medical standards;

(ii) evaluate the process of providing or arranging for the provision of patient care;

(iii) evaluate the system the HMO uses to conduct concurrent reviews and preauthorized medical care;

(iv) evaluate the system the HMO uses to conduct retrospective reviews of medical care; and

(v) evaluate the accessibility and availability of medical care provided or arranged for by the HMO.

(b) Information furnished shall only be used in accordance with 31A-8-404.

(3) Internal peer review. The HMO shall show written evidence of continuing internal peer reviews of medical care given. The program must provide for review by physicians and other health professionals; have direct accountability to senior management; and have resources specifically budgeted for quality assessment, monitoring, and remediation.

R590-76-10. Reporting Requirements and Fee Payments.

Section 31A-3-103 and 31A-4-113 apply to organizations. Both types of entities shall submit their annual reports on the National Association of Insurance Commissioner's (NAIC) blanks that have been adopted for HMOs. In addition, all HMOs shall submit the information asked for in the annual statistical report required by the [~~UDOH~~]Utah Department of Health. The annual statement blank will be filed with the Insurance Department and the [~~UDOH~~]Utah Department of Health by March 1 each year.

R590-76-11. Financial Condition.

(1) Qualified assets. In determining the financial condition of any organization, only the following assets may be used:

(a) assets as determined to be admitted in the Accounting Practices and Procedures Manual published by the NAIC; and

(b) other assets, not inconsistent with the foregoing provisions, deemed by the commissioner available for the provision of health care, at values determined by him/her.

(2) Investments. Investments of organizations shall be consistent with Title 31A, Chapter 18.

(3) Liability insurance. Evidence of adequate general liability and professional liability insurance, or a plan for self-insurance approved by the commissioner, must be maintained by the organization. Organizations may only contract with providers of health services that have liability insurance.

R590-76-12. [~~Enforcement Date.~~

~~The commissioner will begin enforcing the revised provisions of this rule 45 days from the rule's effective date.~~

~~R590-76-13.~~]Severability.

If any provision [~~or clause~~]of this rule or its application to any person or situation is held to be invalid, [~~such~~]that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: HMO insurance
Date of Enactment or Last Substantive Amendment: [~~November 24, 2009~~]2019
Notice of Continuation: August 20, 2019
Authorizing, and Implemented or Interpreted Law: 31A-2-201

Insurance, Administration
R590-233-2
Purpose and Scope

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 44177
FILED: 11/01/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This change is being made to exempt from Rule R590-233 policy forms that are subject to R590-277, Managed Care Health Benefit Plan Policy Standards.

SUMMARY OF THE RULE OR CHANGE: This change clarifies that an insurance policy form that is subject to Rule R590-277, Managed Care Health Benefit Plan Policy Standards, is not subject to this rule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 31A-2-201(3)(a)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There are no anticipated costs or savings to state budget because insurers are already complying with the provisions of this rule.
♦ LOCAL GOVERNMENTS: There is no anticipated cost or savings for local governments because the only affected persons are insurers, and they are already complying with the provisions of this rule.
♦ SMALL BUSINESSES: There is no anticipated cost or savings for small businesses because the only affected persons are insurers, and they are already complying with the provisions of this rule.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no anticipated cost or savings for any other persons because the only affected persons are insurers, and they are already complying with the provisions of this rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated compliance costs for any affected persons because the only affected persons are insurers, and they are already complying with the provisions of this rule.

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:

INSURANCE
ADMINISTRATION
ROOM 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Steve Gooch by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at sgooch@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/16/2019

THIS RULE MAY BECOME EFFECTIVE ON: 12/23/2019

AUTHORIZED BY: Steve Gooch, Information Specialist

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
While this rule does affect non-small businesses, this rule change is not expected to have any fiscal impacts on non-small businesses' revenues or expenditures. This is because the non-small businesses in question, health insurers, are already complying with the provisions of the rule.

The head of the Insurance Department, Todd E. Kiser, has reviewed and approved this fiscal analysis.

R590. Insurance, Administration.
R590-233. Health Benefit Plan Insurance Standards.
R590-233-2. Purpose and Scope.

(1) Purpose. The purpose of this rule is to provide reasonable standardization and simplification of terms and coverages of insurance policies in order to facilitate public understanding and comparison and to prohibit provisions which may be misleading or confusing in connection either with the purchase of such coverages or with the settlement of claims, and to provide for full disclosure in the sale of such insurance.

(2) Scope.

(a) Except as excluded under (b), this regulation applies to all individual and group health benefit plan policies, including policies issued to associations, trusts, discretionary groups, or other similar groupings.

(b) This rule shall not apply to employer group health benefit plans.

(c) This rule does not apply to a health benefit plan subject to R590-277, Managed Care Health Benefit Plan Policy Standards.

(3) The requirements contained in this regulation shall be in addition to any other applicable regulations previously adopted.

KEY: health insurance
Date of Enactment or Last Substantive Amendment: [~~July 30, 2007~~]2019
Notice of Continuation: December 4, 2015
Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-2-202; 31A-22-605; 31A-22-623; 31A-22-626; 31A-23a-402; 31A-23a-412; 31A-26-301

Insurance, Administration
R590-267
Personal Injury Protection Relative Value Study

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 44178
FILED: 11/01/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This change updates the conversion factors and publications for use in 2020 and 2021 with respect to personal injury protection services.

SUMMARY OF THE RULE OR CHANGE: This change adds conversion factors and publications for physicians, dentists, and chiropractors to use when determining the reasonable value of services provided to patients on or after January 1, 2020, and removes the factors and publications that were to be used from 2016 through 2017.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 31A-2-201(3) and Subsection 31A-22-307(2)

MATERIALS INCORPORATED BY REFERENCE:

- ♦ Removes Relative Values for Dentists, published by Optum 360, 2015
- ♦ Adds Relative Values for Physicians, published by Optum 360, 2019
- ♦ Adds Relative Values for Dentists, published by Optum 360, 2019
- ♦ Removes Relative Values for Physicians, published by Optum 360, 2015

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: The Department of Insurance (Department) will be required to purchase two hard copies of the Relative Values for Dentists (RVD) 2019 at $260 each and two copies of the Relative Values for Physicians (RVP) 2019 at $330 each. These publications are incorporated by reference. One copy will be maintained by the Department and one copy will be maintained by the Office of Administrative Rules per rulemaking requirements.

♦ LOCAL GOVERNMENTS: There will be no cost or savings to local governments. This rule covers the method by which providers determine the reasonable value of services they provide to consumers.

♦ SMALL BUSINESSES: Medical, dental, and chiropractic offices that provide services for individuals insured in auto accidents may purchase individually, or as a group, the RVD 2019 or RVP 2019 publication that is incorporated by reference in this rule. The cost of the RVD 2019 is $260 for a hard copy. The cost of the RVP 2019 is $330 for a hard copy. By using the publication with the conversion factors in this rule, they will be able to determine the reasonable charges for services they provide to those injured in automobile accidents. The Department is in the process of securing with the publisher a 50% discount for purchasers in Utah. While the Department is quite confident that it will continue as it has for the past six years, the discount has not been finalized yet.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Auto insurers (or those they contract with to service their claims) and health care providers may purchase the RVD 2019 or RVP 2019 publication that is incorporated by reference in this rule. The cost of the RVD 2019 is $260 for a hard copy. The cost of the RVP 2019 is $330 for a hard copy. By using the publication with the conversion factors in this rule, they will be able to determine the reasonable charges of medical and dental services they are required to reimburse providers for treatment under personal injury protection coverage in Utah. The Department is in the process of securing with the publisher a 50% discount for purchasers in Utah. While the Department is quite confident that it will continue as it has for the past six years, the discount has not been finalized yet. Optum, the company that publishes the RVP 2019 and RVD 2019, will benefit from increased sales of these products.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Affected persons may purchase the RVD 2019 or RVP 2019 publication that is incorporated by reference in this rule. The cost of the RVD 2019 is $260 for a hard copy, while the RVP 2019 is $330 for a hard copy. The Department is sensitive to this compliance cost and it expects to arrange a 50% discount for purchasers with a Utah address, as has been arranged in prior years, to help ameliorate any adverse costs on small businesses. Additionally, as required by rulemaking guidelines, both publications will be available for review by affected persons at the Department and the Office of Administrative Rules at no charge.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I. WHETHER A FISCAL IMPACT TO BUSINESS IS EXPECTED AS A RESULT OF THE PROPOSED RULE AND, IF SO, A DESCRIPTION OF WHY: A number of businesses will have a fiscal impact as a result of this rule. Small businesses (including medical, dental, and chiropractic offices) and larger businesses (such as auto and health insurers) may choose to purchase the RVD 2019 or RVP 2019 publication that is incorporated by reference in this rule. The cost of the RVD 2019 is $260 for a hard copy. The cost of the RVP 2019 is $330 for a hard copy. The Department is sensitive to this compliance cost and it expects to arrange a 50% discount for purchasers with a Utah address, as has been arranged in prior years, to help ameliorate any adverse costs on small businesses. Additionally, as required by rulemaking guidelines, both publications will be available for review by affected persons at the Department and the Office of Administrative Rules at no charge. II. AN ESTIMATE OF THE TOTAL NUMBER OF BUSINESS ESTABLISHMENTS

IN UTAH EXPECTED TO BE IMPACTED: Approximately 4,183 businesses in Utah may be impacted by this rule. This includes physician, dental, and chiropractic offices, as well as medical and auto insurers. III. AN ESTIMATE OF THE SMALL BUSINESS ESTABLISHMENTS IN UTAH EXPECTED TO BE IMPACTED: Approximately 4,076 small businesses in Utah may be impacted by this rule. This includes physician, dental, and chiropractic offices which generally have fewer than 50 employees. The Department is sensitive to this compliance cost and it expects to arrange a 50% discount for purchasers with a Utah address, as has been arranged in prior years, to help ameliorate any adverse costs on small businesses. IV. A DESCRIPTION OF THE SOURCES OF COST OR SAVINGS AS WELL AS THE EXPECTED NET SAVINGS OR COST TO BUSINESS ESTABLISHMENTS AND SMALL BUSINESS ESTABLISHMENTS AS A RESULT OF THE PROPOSED RULE OVER A ONE-YEAR PERIOD, IDENTIFYING ONE-TIME AND ONGOING COSTS: Affected persons may purchase the RVD 2019 or RVP 2019 publication that is incorporated by reference in the rule. The cost of the RVD 2019 is $260 for a hard copy, while the RVP 2019 is $330 for a hard copy. Small businesses (physicians, dentists, chiropractors) are likely to purchase one publication or the other, depending on their specialization. The net one-time cost for small businesses as a whole may be $1,252,480. Larger businesses (insurers) may purchase both publications as well. The net one-time cost for larger businesses as a whole may be $63,130. The net one-time cost for all affected persons (small businesses and large businesses) may be $1,316,790. However, the Department expects to arrange a 50% discount for purchasers with a Utah address, as has been arranged in prior years. It is also important to note that the Department makes its copies of the RVD and RVP available to any affected parties for free viewing in the Department's offices. V. DEPARTMENT HEAD'S COMMENTS ON THE ANALYSIS: The above analysis represents the Department's best estimate of the fiscal impact that this rule may have on businesses. Because the analysis did not include the expected 50% discount, the actual impact is expected to be much lower. Affected persons are also welcome to review both publications at the Department's offices at no cost.

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

INSURANCE
ADMINISTRATION
ROOM 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Steve Gooch by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at sgooch@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/16/2019

THIS RULE MAY BECOME EFFECTIVE ON: 12/23/2019

AUTHORIZED BY: Steve Gooch, Information Specialist

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	**FY 2020**	**FY 2021**	**FY 2022**
State Government	$1,180	$1,180	$1,180
Local Government	$0	$0	$0
Small Businesses	$1,252,480	$1,290,050	$1,328,750
Non-Small Businesses	$63,130	$65,020	$66,970
Other Person	$0	$0	$0
Total Fiscal Costs:	**$1,316,790**	**$1,356,250**	**$1,396,900**
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:	**$1,316,790**	**$1,356,250**	**$1,396,900**
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 107 auto insurers and health insurers in Utah that may be affected by this rule, according to Insurance Department licensing

records. Each of these businesses may purchase both the Relative Values for Physicians and Relative Values for Dentists publications, which cost $330 and $260, respectively. This may result in a total cost to non-small businesses of $63,130.

The head of the Insurance Department, Todd E. Kiser, has reviewed and approved this fiscal analysis.

R590. Insurance, Administration.
R590-267. Personal Injury Protection Relative Value Study Rule.
R590-267-1. Authority.

This rule is promulgated by the insurance commissioner pursuant to Subsections 31A-2-201(3) and 31A-22-307(2).

R590-267-2. Purpose.

(1) The purpose of this rule is to establish a reasonable value of services and accommodations for the diagnosis, care, recovery, or rehabilitation of an injured person under automobile personal injury protection coverage as described in Subsection 31A-22-307(1)(a).

(2) As required by Subsection 31A-22-307(2), the reasonable value is based on the 75th percentile of medical, dental, and chiropractic charges, as they presently exist in the most populous county in this State.

R590-267-3. Scope.

This rule applies to services and accommodations provided:

(1) under automobile personal injury protection coverage as described in Subsection 31A-22-307(1)(a); and

(2) on or after January 1, 2014.

R590-267-4. Definitions.

(1) As used in this rule "Conversion Factor" means a multiplier used to convert the relative value unit or units of a service or a procedure to a reimbursement rate.

(2) As used in this rule "RVD [~~2017~~]2019" means [~~2017~~]2019 Edition of the Relative Values for Dentists published by Optum360, 2525 Lake Park Blvd., Salt Lake City, UT 84120; phone: (800) 464-3649; [~~email: customerassistance@optum.com; -~~] website: www.optum360coding.com.

(3) As used in this rule "RVD [~~2015~~]2017" means [~~2015~~]2017 Edition of the Relative Values for Dentists published by Optum360, 2525 Lake Park Blvd., Salt Lake City, UT 84120; phone: (800) 464-3649; [~~email: customerassistance@optum.com; -~~] website: www.optum360coding.com.

(4) As used in this rule "RVP [~~2017~~]2019" means [~~2017~~]2019 Edition of the Relative Values for Physicians published by Optum360, 2525 Lake Park Blvd., Salt Lake City, UT 84120; phone: (800) 464-3649; [~~email: customerassistance@optum.com; -~~] website: www.optum360coding.com.

(5) As used in this rule "RVP [~~2015~~]2017" means [~~2015~~]2017 Edition of the Relative Values for Physicians published by Optum 360, 2525 Lake Park Blvd., Salt Lake City, UT 84120; phone: (800) 464-3649; [~~email: customerassistance@optum.com; -~~] website: www.optum360coding.com.

(6) As used in this rule "Relative Value Unit" means a numerical value assigned to a medical or dental procedure as published in RVP and RVD respectively.

(7) The publications identified in Subsections R590-267-4(2), (3), (4), and (5) are hereby incorporated by reference within this rule.

R590-267-5. Conversion Factors.

(1)(a) The following conversion factors shall be used with RVP [~~2017~~]2019 to determine the reasonable value of medical services or accommodations provided on or after January 1, [~~2018~~]2020:

(i) anesthesia, [~~99.27~~]108.00;
(ii) surgery, [~~225.90~~]225.88;
(iii) radiology, [~~37.50~~]35.60;
(iv) pathology, [~~25.00~~]24.29;
(v) medicine, [~~13.00~~]12.80;
(vi) evaluation and management, [~~14.65~~]14.74.

(b) The conversion factor used with RVD [~~2017~~]2019 to determine the reasonable value of dental services or accommodations provided on or after January 1, [~~2018~~]2020 shall be [~~63.00~~]66.67.

(2)(a) The following conversion factors shall be used with RVP [~~2015~~]2017 to determine the reasonable value of medical services or accommodations provided from January 1, [~~2016~~]2018 through December 31, [~~2017~~]2019:

(i) anesthesia, [~~97.13~~]99.27;
(ii) surgery, [~~200.00~~]225.90;
(iii) radiology, [~~35.84~~]37.50;
(iv) pathology, [~~24.29~~]25.00;
(v) medicine, [~~11.67~~]13.00;
(vi) evaluation and management, [~~13.16~~]14.65.

(b) The conversion factor used with RVD [~~2015~~]2017 to determine the reasonable value of dental services or accommodations provided from January 1, [~~2016~~]2018 through December 31, [~~2017~~]2019 shall be [~~60.00~~]63.00.

R590-267-6. Fee Schedule.

The reasonable value of any service or accommodation shall be calculated by multiplying the relative value unit assigned to the service or accommodation by the applicable conversion factor prescribed in R590-267-5.

R590-267-7. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-267-8. Severability.

If any provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: relative value study
Date of Enactment or Last Substantive Amendment: [~~January 1, 2018~~]2019
Notice of Continuation: October 24, 2018
Authorizing, and Implemented or Interpreted Law: 31A-2-201(3); 31A-22-307(2)

Insurance, Administration
R590-282
Pharmacy Benefit Managers

NOTICE OF PROPOSED RULE

(New Rule)
DAR FILE NO.: 44180
FILED: 11/01/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: H.B. 370, Pharmacy Benefit Manager Amendments, passed during the 2019 General Session, requires the Insurance Department to license pharmacy benefit managers (PBMs). This rule provides information on the licensing of PBMs and establishes the data reporting guidelines required by H.B. 370.

SUMMARY OF THE RULE OR CHANGE: This rule defines terms, provides licensing requirements, establishes the format for data submission to the Utah Insurance Department, and provides the date the information is due.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 31A-2-201(3) and Subsection 31A-46-202(1)(a) and Subsection 31A-46-301(3)(c)(ii)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There may be slight savings to the state budget. The administrative cost of processing PBM licenses is approximately $35,000 per year. Having a rule for applicant filings will help keep these costs down because it will reduce the time required to follow up on incomplete applications. This rule covers licensing requirements and the format for data submission to the Commissioner. There will be a minimal increase in employee time spent processing the data that is received by the Commissioner, but this will be covered by existing FTEs.
♦ LOCAL GOVERNMENTS: There will be no cost or savings to local governments because this rule governs only the relationship between the state and certain licensees.
♦ SMALL BUSINESSES: Most PBMs are not small businesses. For those PBMs considered to be a small business, the administrative cost to process the license renewal payment each year will be minimal. The cost of the annual license fee will be $1,050 per year. There will also be a cost to businesses in the form of work hours spent complying with the data reporting requirements, but this cost cannot be quantified because it is unique to each company.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Administrative costs to licensees of the annual payment of the license fee should be nominal. The cost of the annual license fee will be $1,050 per year. There will also be a cost to businesses in the form of work hours spent complying with the data reporting requirements, but this cost cannot be quantified because it is unique to each company.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Administrative costs to licensees of the annual payment of the license fee should be nominal. The cost of the annual license fee will be $1,050 per year. There will also be a cost to businesses in the form of work hours spent complying with the data reporting requirements, but this cost cannot be quantified because it is unique to each company.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I. WHETHER A FISCAL IMPACT TO BUSINESS IS EXPECTED AS A RESULT OF THE PROPOSED RULE AND, IF SO, A DESCRIPTION OF WHY: Yes, there is a fiscal impact to a licensed PBM business. However, the majority of the fiscal impact comes from the required fee rule and not the application rule. In other words, the fiscal impact results from the license fee of $1,050 which is assessed annually. There will also be a cost to businesses in the form of work hours spent complying with the data reporting requirements, but this cost cannot be quantified because it is unique to each company. II. AN ESTIMATE OF THE TOTAL NUMBER OF BUSINESS ESTABLISHMENTS IN UTAH EXPECTED TO BE IMPACTED: There are 30 PBM businesses that will submit an application. III. AN ESTIMATE OF THE SMALL BUSINESS ESTABLISHMENTS IN UTAH EXPECTED TO BE IMPACTED: The Department estimates that there may be two small businesses that submit an application. IV. A DESCRIPTION OF THE SOURCES OF COST OR SAVINGS AS WELL AS THE EXPECTED NET SAVINGS OR COST TO BUSINESS ESTABLISHMENTS AND SMALL BUSINESS ESTABLISHMENTS AS A RESULT OF THE PROPOSED RULE OVER A ONE-YEAR PERIOD, IDENTIFYING ONE-TIME AND ONGOING COSTS: This rule is required by statute under H.B. 370 (2019). Because this rule describes the method of data reporting, there may be a cost to businesses to prepare the data and report it. The data already exists in a company's records; the cost would be the time it takes to create the report and send it to the Department. This cost cannot be quantified because it is unique to each company. V. DEPARTMENT HEAD'S COMMENTS ON THE ANALYSIS: The above analysis represents the Department's best estimate of the fiscal impact that this rule may have on businesses.

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

INSURANCE
ADMINISTRATION
ROOM 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Steve Gooch by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at sgooch@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/16/2019

THIS RULE MAY BECOME EFFECTIVE ON: 12/23/2019

AUTHORIZED BY: Steve Gooch, Information Specialist

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	$2,100	$2,100	$2,100
Non-Small Businesses	$31,500	$31,500	$31,500
Other Person	$0	$0	$0
Total Fiscal Costs:	**$33,600**	**$33,600**	**$33,600**
Fiscal Benefits			
State Government	$33,600	$33,600	$33,600
Local Government	$0	$0	$0
Small Businesses	$	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits:	**$33,600**	**$33,600**	**$33,600**
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 30 non-small pharmacy benefit managers (PBMs) in Utah in FY 2020. As a result of H.B. 370, which was passed during the 2019 General Session, each of those PBMs must be licensed to do business in Utah. Each PBM will be required to pay a combined $1,050 licensing fee each year. This will result in $31,500 of new revenue to the state annually. The Department does not have enough data about past years to estimate growth for future fiscal years.

The head of the Insurance Department, Todd E. Kiser, has reviewed and approved this fiscal analysis.

R590. Insurance, Administration.

R590-282. Pharmacy Benefit Managers.

R590-282-1. Authority.

This rule is promulgated pursuant to:

(1) Subsection 31A-2-201(3), which authorizes the commissioner to make rules to implement the provisions of Title 31A;

(2) Subsection 31A-46-202(1)(a) which authorizes the commissioner to make a rule to establish the method and forms to submit an application, and;

(3) Subsection 31A-46-301(3)(c)(ii), which authorizes the commissioner to make a rule for the manner in which a pharmacy benefit manager may submit corrections and information with supporting evidence and comments.

R590-282-2. Purpose and Scope.

(1) The purpose of this rule is to:

(a) define terms;

(b) provide licensing requirements; and

(c) establish the format for reporting data.

(2) This rule applies to all pharmacy benefit managers operating in Utah on or after July 1, 2019.

R590-282-3. Licensing.

(1)(a) To obtain or renew a pharmacy benefit manager license, the applicant shall:

(i) submit the Utah Insurance Department Pharmacy Benefit Manager Application and the required attachments; and

(ii) pay the fees in accordance with R590-102.

(b) The Utah Insurance Department Pharmacy Benefit Manager Application is available on the Department's website at https://insurance.utah.gov.

(2)(a) The licensing period begins on April 1 of each year and ends on March 31 of the following year.

(b) A license for which a renewal license application is not received by the commissioner before April 1 will be considered to have expired.

(4) Any material changes in the information submitted in an application shall be reported to the commissioner no later than 30 days after the day on which the information changes.

R590-282-5. Reporting Requirements.

(1)(a) Beginning on April 1, 2020, and each year thereafter, a pharmacy benefit manager shall submit the Utah Pharmacy Benefit Manager Report.

(b) The Utah Pharmacy Benefit Manager Report and its instructions are available on the Department's website.

(2)(a) At least 30 days prior to publishing any data derived from the Utah Pharmacy Benefit Manager Report, the commissioner will email to each pharmacy benefit manager submitting data under Subsection (1), a general description of the data to be published.

(b)(i) A pharmacy benefit manager may respond to the email by submitting the information specified in Subsection 31A-46-301(3)(c)(ii) to the Health Research folder of the Department's secure

file upload website at https://forms.uid.utah.gov/insurance/fileUploads/.

(ii) Any response must be received within 30 days of the date of the email described in Subsection(2)(a).

R590-282-6. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided under Sections 31A-2-308 and 31A-46-401.

R590-282-7. Enforcement Date.

The commissioner will begin enforcing this rule 45 days from the rule's effective date.

R590-282-8. Severability.

If any provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: insurance, pharmacy benefit manager
Date of Enactment or Last Substantive Amendment: 2019
Authorizing, and Implemented or Interpreted Law: 31A-2-201(3); 31A-46-301(3)(c)(ii); 31A-46-202(1)(a)

Insurance, Administration
R590-283
Defrayal of State-Required Benefits

NOTICE OF PROPOSED RULE

(New Rule)
DAR FILE NO.: 44181
FILED: 11/01/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Federal law requires that if a state mandates new benefits on the Patient Protection and Affordable Care Act (PPACA) plans that are in excess of the essential health benefits established on January 1, 2012, the cost to fund those benefits must be defrayed by the state. This rule establishes a method to pay for those benefits in general, and in particular for the autism Applied Behavior Analysis (ABA) therapy benefit that was determined to be a new state-mandated benefit.

SUMMARY OF THE RULE OR CHANGE: Carriers must make appropriate changes to federal templates to ensure they are not double paid for state-mandated benefits. Carriers must provide data to the Department of Insurance (Department) so that the Department can estimate the amount defrayable for state-mandated benefits. The state will pay for state-mandated benefits based on the average cost of those benefits per affected person per month.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 31A-30-118(4)

MATERIALS INCORPORATED BY REFERENCE:

- Adds Adaptive Behavior Services/Applied Behavior Analysis (ABA) Billing Standard, published by Utah Health Information Network, 05/15/2018

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: The only state-mandated benefit currently required to be defrayed is for autism ABA therapy in the individual market. Carriers have provided estimates of the cost of ABA therapy for the whole market that range between $700,000 and $20,000,000 (with the most probable estimates between $700,000 and $2,800,000).

♦ LOCAL GOVERNMENTS: There is no anticipated cost or savings to the local governments. This rule deals with the relationship between state government and health insurers in the state.

♦ SMALL BUSINESSES: There is no anticipated cost or savings to small businesses. This rule deals with the relationship between state government and health insurers in the state, all of which are large businesses.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Individual market participants will see a small decrease in their premiums (ranging from 0.003% to 2.1% depending on the carrier). Carriers participating in the individual market have reduced their premiums in recognition of the state defraying the cost of the ABA therapy.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Carriers participating in the individual market will have negligible reporting costs because they need to submit claims to the state periodically to receive payment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I. WHETHER A FISCAL IMPACT TO BUSINESS IS EXPECTED AS A RESULT OF THE PROPOSED RULE AND, IF SO, A DESCRIPTION OF WHY: Yes. Insurance carriers participating in the individual market were required to reduce premiums by the amount they expect to receive from the state defrayal of autism benefits. They expect to receive roughly an equivalent amount from the state. II. AN ESTIMATE OF THE TOTAL NUMBER OF BUSINESS ESTABLISHMENTS IN UTAH EXPECTED TO BE IMPACTED: There are five businesses in the state that will be impacted by this rule. All of these businesses are non-small businesses. III. AN ESTIMATE OF THE SMALL BUSINESS ESTABLISHMENTS IN UTAH EXPECTED TO BE IMPACTED: None. IV. A DESCRIPTION OF THE SOURCES OF COST OR SAVINGS AS WELL AS THE EXPECTED NET SAVINGS OR COST TO BUSINESS ESTABLISHMENTS AND SMALL BUSINESS ESTABLISHMENTS AS A RESULT OF THE PROPOSED RULE OVER A ONE-YEAR PERIOD, IDENTIFYING ONE-TIME AND ONGOING COSTS: Carriers in the individual market have reduced their premiums by about $1,800,000 in anticipation of receiving approximately

that amount back from the state in defrayal payments. Carriers will recognize some costs in the form of interest discounting because the defrayal payments are paid in arrears. V. DEPARTMENT HEAD'S COMMENTS ON THE ANALYSIS: The above analysis represents the Department's best estimate of the fiscal impact that this rule may have on businesses.

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

INSURANCE
ADMINISTRATION
ROOM 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Steve Gooch by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at sgooch@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/16/2019

THIS RULE MAY BECOME EFFECTIVE ON: 12/23/2019

AUTHORIZED BY: Steve Gooch, Information Specialist

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	**FY 2020**	**FY 2021**	**FY 2022**
State Government	$1,800,000	$1,900,000	$2,000,000
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$1,800,000**	**$1,900,000**	**$2,000,000**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$1,800,000	$1,900,000	$2,000,000
Other Persons	$0	$0	$0
Total Fiscal Benefits:	**$1,800,000**	**$1,900,000**	**$2,000,000**
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 will be a net zero impact to the 5 affected non-small businesses as a result of this rule. The affected non-small businesses are insurance carriers that participate on the individual market. They were required to reduce their premiums by the amount they expect to receive from the state defrayal of autism benefits. These 5 carriers have reduced their premiums by $1,800,000 on aggregate. The state will be paying approximately this amount back to the carriers to defray their costs for covering autism claims.

The head of the Insurance Department, Todd E. Kiser, has reviewed and approved this fiscal analysis.

R590. Insurance, Administration.

R590-283. Defrayal of State-Required Benefits.

R590-283-1. Authority.

This rule is promulgated by the commissioner pursuant to Subsections 31A-2-201(3)(a) and 31A-30-118(4).

R590-283-2. Purpose and Scope.

(1) The purpose of this rule is to establish the method and timing of defraying the cost of a state-required benefit enacted on or after January 1, 2012 that is subject to 45 CFR 155.170 of the Patient Protection and Affordable Care Act.

(2) This rule applies to any health benefit plan that:

(a) is a qualified health plan;

(b) is offered on the exchange in the individual or small group market;

(c) has an effective date of coverage on or after January 1, 2020; and

(d) offers a state-required benefit in excess of the Utah Essential Health Benefits Package.

(3) A health benefit plan offering a state-required benefit that is offered exclusively off-exchange is not eligible for defrayal of state mandated benefits.

R590-283-3. Definitions.

For the purposes of this rule, the commissioner adopts the definitions of Sections 31A-1-301, 31A-30-103, and Rule R590-266, and the following definitions:

(1) "EHB" means essential health benefits.

(2) "Exchange" means the federal exchange, www.healthcare.gov, that makes qualified health plans available to qualified individuals or employers.

(3) "Qualified health plan" means a qualified health plan as defined in 45 CFR 155.20.

(4) "State-required benefit" means a benefit required by the state on or after January 1, 2012, other than for purposes of compliance with federal requirements, that is in excess of the Utah Essential Health Benefits Package.

R590-283-4. Unified Rate Review Template (URRT), Rate Data Template (RDT), and Plans and Benefits Template (PBT) Modifications.

A carrier who is eligible to receive defrayal for a state-required benefit shall modify the federal rate filing template as follows:

(1) a carrier shall exclude the amount the state will defray from the rates submitted on both the URRT, as well as the RDT;

(2) a carrier shall indicate in the rate filing's actuarial memorandum:

(a) whether or not the carrier anticipates a defrayal from the state for the cost of an eligible state-required benefit;

(b) that the cost of the state-required benefit is not included in the premiums; and

(c) detail regarding the amount the carrier expects to receive from the state for defrayal of the state-required benefit.

(3) a carrier shall not factor the state-required benefits into the calculation for the "EHB Percent of Total Premium" field on the PBT, a carrier should treat the state-required benefit as if it does not exist for purposes of this field, so that the state-required benefits are excluded from the total premium from which the EHB percent of premium is calculated; and

(4) a carrier shall indicate in the "Benefits Information" field on the PBT that they cover the state-required benefits, marking the state-required benefit as "Not EHB" as the "EHB Variance Reason."

R590-283-5. Defrayal of State-Required Benefits.

(1) A carrier seeking a state-required benefit defrayal shall, on or before April 30th of each year, starting on April 30, 2021, submit to the commissioner a request that includes the following information:

(a) the state-required benefit for which defrayal is sought;

(b) the count of individuals who received services for the state-required benefit during the preceding calendar year; and

(c) the amount incurred and paid by the carrier for the state-required benefit during the preceding calendar year.

(2)(a) The defrayal payments shall be based on an aggregate of the data received under Subsection (1) from all carriers.

(b) The defrayal payment to a carrier is calculated based on the sum of the total defrayable costs incurred across all carriers divided by the sum of the total count of individuals receiving defrayable services across all carriers. The result will be multiplied by the sum of the count of individuals receiving defrayable services for each carrier.

(3) Requests shall be submitted via the System for Electronic Rate and Form Filings, SERFF.

(4) State-required defrayal payments are paid in arrears for the prior calendar year.

(5) If legislative funding is less than the total amount of requested defrayals, all defrayal payments will be prorated. A carrier may include an adjustment to the next pricing year's rates to account for a legislative funding deficit. Any adjustment shall be clearly delineated in the actuarial memorandum.

R590-283-6. Reporting.

(1) This rule incorporates by reference the Utah Health Information Network's, UHIN, "Adaptive Behavior Services / Applied Behavior Analysis (ABA) Billing Standard" version 3.1. The standard is available on the Department's website at https://insurance.utah.gov or on UHIN's website at https://uhin.org.

(2) A carrier shall use the UHIN "Adaptive Behavior Services / Applied Behavior Analysis (ABA) Billing Standard" version 3.1 to identify and report claims subject to defrayal under R590-283-5(1)(c) and this section.

(3) For the commissioner to project defrayal costs, a carrier anticipating a defrayal payment shall submit to the commissioner:

(a) on or before April 15th of each year, starting on April 15, 2020:

(i) the state-required benefit for which defrayal is sought;

(ii) the count of individuals who received services for the state-required benefit during the current calendar year; and

(iii) the amount incurred and paid by the carrier for the state-required benefit during the current calendar year.

(b) on or before November 15th of each year, starting on November 15, 2020:

(i) the state-required benefit for which defrayal is sought;

(ii) the count of individuals who received services for the state-required benefit during the current calendar year; and

(iii) the amount incurred and paid by the carrier for the state-required benefit during the current calendar year.

(c) Reports shall be submitted via the System for Electronic Rate and Form Filings, SERFF.

R590-283-7. Claims Auditing.

The commissioner may audit:

(1) a carrier's claims that are subject to defrayal; and

(2) a carrier's process for determining which claims are subject to defrayal.

R590-283-8. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-283-9. Enforcement Date.

The commissioner will begin enforcing the provisions of this rule for applicable policies issued or renewed on or after January 1, 2020.

R590-283-10. Severability.

If any provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: insurance
Date of Enactment or Last Substantive Amendment: 2019
Authorizing, and Implemented or Interpreted Law: 31A-30-118(4)

Insurance, Title and Escrow Commission
R592-11
Title Insurance Producer Annual and Controlled Business Reports

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 44175
FILED: 11/01/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: S.B. 121, passed during the 2019 General Session, eliminated the prohibition on controlled business, which eliminated the need to report controlled business information to the Department of Insurance (Department). This amendment eliminates the requirement to report controlled business. It also eliminates requirements to provide unnecessary commercial financial information in the annual report.

SUMMARY OF THE RULE OR CHANGE: Controlled business information is no longer required in the annual report. A title insurance agency's commercial financial information is no longer required in the annual report. A streamlined report form is provided for title insurance agencies to use.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 31A-23a-413 and Subsection 31A-2-404(2)(a) and Subsection 31A-23a-406(1)(g)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The Department spent a very small amount of time reviewing controlled business and commercial financial information. There may be minimal cost savings because the statute no longer requires the Department to review that information.
♦ LOCAL GOVERNMENTS: There is no anticipated cost or savings to local governments. This rule change governs only the relationship between the Department and its title insurance licensees.
♦ SMALL BUSINESSES: Title insurance agencies may have incurred costs in gathering and reporting controlled business and commercial financial information to the Department. This amendment eliminates the need to incur those costs.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no anticipated cost or savings to any other persons. This rule change governs only the relationship between the Department and its title insurance licensees.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for any affected persons. This amendment requires no additional work or reporting. If anything, affected persons may see a slight reduction in costs as a result of this amendment.

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

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
INSURANCE
TITLE AND ESCROW COMMISSION
ROOM 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Steve Gooch by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at sgooch@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/16/2019

THIS RULE MAY BECOME EFFECTIVE ON: 12/23/2019

AUTHORIZED BY: Steve Gooch, Information Specialist

Appendix 1: Regulatory Impact Summary Table*

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

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

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

Appendix 2: Regulatory Impact to Non-Small Businesses
This rule amendment is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because it requires no additional work or reporting. This amendment was required by S.B. 121 (2019), which eliminated the prohibition on controlled business, and hence the need to report controlled business information to the Department. If a business incurred costs when gathering and reporting such information, they will no longer need to incur those costs. The Department has no way of knowing how many businesses would fit that description, nor the amount of costs that could have been incurred. The Department expects that there will be no fiscal impact for the vast majority of affected businesses.

The head of the Insurance Department, Todd E. Kiser, has reviewed and approved this fiscal analysis.

R592. Insurance, Title and Escrow Commission.
R592-11. Title Insurance Producer Annual [~~and Controlled Business~~]Reports.
R592-11-1. Authority.

This rule is promulgated pursuant to:

(1) Section 31A-2-404(2)(a), which requires the Title and Escrow Commission [~~(Commission)~~]to make rules related to title insurance;

(2) Section 31A-23a-413, which requires certain title insurance producers to file an annual report[~~the annual filing of a report containing a verified statement of the financial condition, transactions, and affairs by an agency title insurance producer and an individual title insurance producer who is not an employee of a title insurer or who has not been designated to an agency title insurance producer;~~

~~(3) Subsection 31A-23a-503(8), which requires the annual filing of a controlled business report~~]; and

([~~4~~]3) Subsection 31A-23a-406(1)(g), which requires the maintenance of a physical address in Utah.

R592-11-2. Purpose[~~and Scope~~].

[~~(1) The purpose of t~~]This rule [~~is to~~]establishes the [~~form~~]requirements of and filing deadline for the Title Insurance Producer Annual Report [~~and Controlled Business Report~~]required by Section 31A-23a-413[~~and Subsection 31A-23a-503(8)(a).~~

~~(2) This rule applies to an agency title insurance producer and an individual title insurance producer who is not an employee of a title insurer or who has not been designated to an agency title insurance producer~~].

R592-11-3. Title Insurance Producer Annual Report.

(1) The following shall file a Title Insurance Producer Annual Report not later than April 30 of each year[~~, if they have conducted title insurance business in the State of Utah within the time period described in R592-11-3(4)~~]:

(a) an agency title insurance producer; and

(b) an individual title insurance producer who is not an employee of a title insurer or who has not been designated to an agency title insurance producer.

(2) A Title Insurance Producer Annual Report shall [~~consist of~~]include:

(a) [~~a balance sheet and an income and expense statement prepared and presented in conformity with generally accepted accounting principles;~~

~~(i) title premium, including endorsement income and expenses, shall be reported separately from the escrow income and expenses;~~

~~(b) the name and address of each financial institution where a title or escrow trust account is maintained~~]the number and location of each title or escrow trust account;

([~~e~~]b) proof of financial protection [~~that complies with~~] required by Subsection 31A-23a-204(2)[~~, shall consist of one or more of the following~~]:

(i) a copy of the declarations page of a fidelity bond;

(ii) a copy of the declarations page of a professional liability insurance policy; or

(iii) a copy of the commissioner's approval of equivalent financial protection approved by the commissioner;

([~~d~~]c) the name of the individual title insurance producer designated as the "qualifying licensee," as provided in 31A-23a-204; [~~, and~~]

([~~e~~]d) the physical address in Utah maintained by the agency title insurance producer or individual title insurance producer, pursuant to 31A-23a-406(1)(g)[~~,~~]; and

(e) the physical address of each Utah branch office maintained by the agency title insurance producer or individual title insurance producer.

(3) A title insurance producer may comply with Subsection R592-11-3[~~, (2)(e) does not apply to an attorney exempted under 31A-23a-204(8)~~] by completing and submitting [~~,~~

~~(4) T~~]the Title Insurance Producer Annual Report Form that is available on the department's website[~~period shall be the preceding calendar year.~~

~~(5) A Title Insurance Producer Annual Report will be considered protected data if the producer submitting the report requests classification as a protected record in accordance with Sections 63G-2-305 and 63G-2-309~~].

R592-11-4. [~~Controlled Business Report.~~

~~(1) The following that conduct title insurance business in the State during the time period described in R592-11-4(2)(a) shall file an annual Controlled Business Report not later than April 30 of each year:~~

~~(a) an agency title insurance producer; and~~

~~(b) an individual title insurance producer who is not an employee of a title insurer or who has not been designated to an agency title insurance producer.~~

~~(2)(a) The Controlled Business Report period shall be the preceding calendar year and shall contain the information required in Subsection 31A-23a-503(8)(a); and~~

~~(b) contain the name, address, and percentage of ownership of each owner.~~

~~(3) A Controlled Business Report is a public record upon filing.~~

~~R592-11-5.~~ |Electronic Filing of Title Insurance Producer Annual Report[~~ and Controlled Business Report~~].

[~~(1)~~]The Title Insurance Producer Annual Report[~~ and the Controlled Business Report~~] shall be submitted[~~—together~~] electronically using the Insurance Department's[~~ of Insurance's~~] secure file upload site located at https://forms.uid.utah.gov/insurance/fileUploads/[~~.~~

~~(a) Registration may be required.~~

~~(2) The Title Insurance Producer Annual Report and the Controlled Business Report shall be submitted not later than April 30 of each year as attachments to the Title Insurance Agency Annual Reports Transmittal Form.~~

~~(3) The following report forms, which are available on the department's website, shall be used to submit the Title Insurance Producer Annual Report and the Controlled Business Report:~~

~~(a) Title Insurance Producer Annual and Controlled Business Reports Transmittal form; and~~

~~(b) Controlled Business Report form.~~

~~(4) Actual copies of the forms may be used or may be adapted to a particular word processing system, however, if adapted, the content, size, and font shall be similar and shall be:~~

~~(a) converted to one portable document format or PDF prior to submission; and~~

~~(b) submitted in the order listed on the Annual Report Checklist located at http://insurance.utah.gov/agent/title/agency-reports-information.php.~~

~~R592-11-6. Penalties.~~

~~A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308~~].

R592-11-[~~7~~]5. Enforcement Date.

The commissioner will begin enforcing this rule [~~45 days from the rule's~~]on its effective date.

R592-11-[~~8~~]6. Severability.

If any provision [~~or clause~~]of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: title insurance
Date of Enactment or Last Substantive Amendment: [~~April 15, 2016~~]2019
Notice of Continuation: June 15, 2016
Authorizing, and Implemented or Interpreted Law: 31A-2-404(2)(a); 31A-23a-406(1)(g); 31A-23a-413; 31A-23a-503(8)

Labor Commission, Industrial Accidents
R612-300
Workers' Compensation Rules - Medical Care

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 44158
FILED: 10/30/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to adopt, with modifications, the Optum 2019 Essential Resource-Based Relative Value Schedule (RBRVS), 2019 1st Quarter Update, and to adjust the conversion factors regarding certain medical specialties.

SUMMARY OF THE RULE OR CHANGE: The amendment incorporates by reference current versions of the RBRVS, and adjusts certain conversion factors related to anesthesiology from $62 to $68 and other surgery from $43 to $53 per unit.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 34A-1-104 and Section 34A-2-201

MATERIALS INCORPORATED BY REFERENCE:

- ♦ Updates The Essential RBRVS, published by Optum360, 2019
- ♦ Updates Current Procedural Coding Expert, published by Optum360, 2019

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: The proposed amendment will impose no additional administrative or enforcement costs on the Labor Commission, which is the state agency charged with administering and enforcing Utah's workers' compensation system. The National Council on Compensation Insurance projects that overall workers' compensation costs will increase by 0.2% as a result of adoption of the new conversion factors. The Commission presumes that this increase will be passed on to the state in increased workers' compensation insurance premiums.

♦ LOCAL GOVERNMENTS: The National Council on Compensation Insurance projects that overall workers' compensation costs will increase by 0.2% as a result of the adoption of the new conversion factors. The Commission presumes that this increase will be passed on to local governments in increased workers' compensation insurance premiums.

♦ SMALL BUSINESSES: The National Council on Compensation Insurance projects that overall workers' compensation costs will increase by 0.2% as a result of the adoption of the new conversion factors. The Commission presumes that this increase will be passed on to all

employers, including small businesses, in increased workers' compensation insurance premiums.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The National Council on Compensation Insurance projects that overall workers' compensation costs will increase by 0.2% as a result of the adoption of the new conversion factors. The Commission presumes that this increase will be passed on to consumers.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Workers' compensation insurance carriers and those providing medical services to injured workers will be affected by this proposed amendment. Because the RBRVS and Current Procedural Terminology (CPT) systems are already used throughout the health care industry, insurance carriers, and medical providers already receive and use updates to those systems. The Commission does not anticipate that the updates required by this rule amendment will result in any additional compliance costs for those entities.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The workers' compensation system uses the same relative value (RBRVS) and coding (CPT) systems that are generally used throughout the health industry. Periodically, the RBRVS and CPT systems are updated. It is therefore necessary for the Commission to also adopt those changes and adjust its conversion factors relating to certain medical specialties in order to 1) avoid confusion and 2) provide adequate payment for medical care provided to injured workers. This year, the modifications to the conversion factors will result in increased payments for some medical services. These increases will very likely be factored in to workers' compensation insurance premiums but may be offset by reductions in the RBRVS values.

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

LABOR COMMISSION
INDUSTRIAL ACCIDENTS
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:
♦ Christopher Hill by phone at 801-530-6113, by FAX at 801-530-6390, or by Internet E-mail at chill@utah.gov
♦ Ron Dressler by phone at 801-530-6841, by FAX at 801-530-6804, or by Internet E-mail at rdressler@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/16/2019

THIS RULE MAY BECOME EFFECTIVE ON: 12/23/2019

AUTHORIZED BY: Jaceson Maughan, Commissioner

Appendix 1: Regulatory Impact Summary Table*

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

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

Appendix 2: Regulatory Impact to Non-Small Businesses
For parties where no impact is estimable: There are numerous factors that go into determining workers' compensation premiums, including business size, classification type, history of injuries, medical costs, and statutory benefits paid. Due to the increase in certain medical benefits there may be an impact to the cost of workers' compensation premiums which would represent an impact to businesses, but it is impossible to determine the actual impact.

Commissioner Jaceson R. Maughan has reviewed and approved this fiscal analysis.

R612. Labor Commission, Industrial Accidents.
R612-300. Workers' Compensation Rules - Medical Care.
R612-300-1. Purpose, Scope and Definitions.

A. Purpose and scope. Pursuant to authority granted the Utah Labor Commission under Subsection 34A-2-407(9) and Subsection 34A-2-407.5(1) of the Utah Workers' Compensation Act, these rules establish:

1. Reasonable fees for medical care necessary to treat workplace injuries;

2. Standards for disclosure of medical records;

3. Reporting requirements; and

4. Treatment protocols and quality care guidelines.

B. Definitions. The following definitions apply within Rule R612-300:

1. "Health care provider" is defined by Subsection 34A-2-111(1)(a) as "a person who furnishes treatment or care to persons who have suffered bodily injury" and includes hospitals, clinics, emergency care centers, physicians, nurses and nurse practitioners, physician's assistants, paramedics and emergency medical technicians.

2. "Injured worker" is an individual claiming workers' compensation medical benefits for a work-related injury or disease.

3. "Payor" is the entity responsible for payment of an injured worker's medical expenses';

4. "Physician" is defined by Subsection 34A-2-111(1)(b) to include any licensed podiatrist, physical therapist, physician, osteopath, dentist or dental hygienist, physician's assistant, naturopath, acupuncturist, chiropractor, or advance practice registered nurse.

5. "Workplace injury" is an injury or disease compensable under either the Utah Workers' Compensation Act or the Utah Occupational Disease Act.

R612-300-2. Obtaining Medical Care for Injured Workers.

A. Right of payor to designate initial health care provider.

1. A Payor may adopt managed health care programs. Such programs may designate specific health care providers as "preferred providers" for providing initial medical care for injured workers.

2. A preferred provider program must allow an injured worker to select from two or more health care providers to obtain necessary medical care. At the time a preferred provider program is established, the payor must notify employees of the requirements of the program.

3. If the requirement of subsection A.2. are met, an injured worker subject to a preferred provider program must seek initial medical care from a preferred provider unless:

a. No preferred provider is available;

b. The injured worker believes in good faith that his or her medical condition is not a workplace injury; or

c. Travel to a preferred provider is unduly burdensome.

4. If an injured worker who is subject to a preferred provider program fails to obtain initial medical care from a preferred provider, the payor's liability for the cost of such initial medical care is limited to the amount the payor would have paid a preferred provider. The injured worker may be held personally liable for the remaining balance.

B. Liability for medical expense incurred at payor's direction. If a payor directs an injured worker to obtain an initial medical assessment of a possible work injury, the payor is liable for the cost of such assessment.

1. A medical provider performing an initial assessment must obtain the payor's preauthorization for any diagnostic studies beyond plain x-rays.

C. Injured worker's right to select provider after initial medical care. After an injured worker has received initial care from a preferred provider, the injured worker may obtain subsequent medical care from a qualified provider of his or her choice. The payor is liable for the expense of such medical care.

1. An injured worker's right to select medical providers is subject to subsection D. of this rule, "Limitations to Injured Worker's Right to Change Physicians."

D. Limitations on injured worker's right to change physicians.

1. An injured worker may change health care providers one time without obtaining permission from the payor. The following circumstances DO NOT constitute a change of health care provider:

a. A treating physician's referral of the injured worker to another health care provider for treatment or consultation;

b. Transfer of treatment from an emergency room to a private physician, unless the emergency room was designated as the payor's preferred provider;

c. Medically necessary emergency treatment;

d. A change of physician necessitated by the treating physician's failure or refusal to rate a permanent partial impairment.

2. The injured worker shall promptly report any change of provider to the payor.

3. After an injured worker has exercised his or her one-time right to change health care providers, the worker must request payor approval of any subsequent change of provider. If the payor denies or fails to respond to the request, the injured worker may request approval from the Director of the Division of Industrial Accidents. The Director will authorize a change of provider if necessary for the adequate medical treatment of the injured worker or for other reasonable cause.

4. An injured worker who changes health care providers without payor or Division approval may be held personally liable for the non-approved provider's fees.

E. Hospital or surgery pre-authorization. Except when immediate surgery or hospitalization is medically necessary on an emergency basis, surgery or hospitalization must be pre-authorized by the payor.

1. Within two working days of receipt of a request for authorization, the payor shall notify the physician and injured worker that the request is either approved or denied, or is undergoing medical review.

2. Any medical review of a pending request for authorization must be conducted promptly.

F. Notification required from injured workers leaving Utah. Section 34A-2-604 of the Workers' Compensation Act requires injured workers receiving medical care for a workplace injury to notify the Industrial Accidents Division before leaving the state or locality. Division forms 043 and Form 044 are to be used to provide such notice.

G. Injured worker's right to privacy. No agent of the payor may be present during an injured worker's medical care without the consent of the injured worker. However, if the payor's agent is excluded from a medical visit, the physician and the injured worker shall meet with the agent at the conclusion of the visit or at some other reasonable time so as to communicate regarding medical care and return-to-work issues.

H. Payor's right of medical examination. The payor may arrange for the medical examination of an injured worker at any reasonable time and place. A copy of the medical examination report shall be made available to the Commission upon request.

R612-300-3. Required Reports.

A. Form 123, Physician's Initial Report. Within one week after providing initial medical care to an injured worker, a health care provider shall complete "Form 123 - Physicians' Initial Report." The provider shall fully complete Form 123 according to its instructions. The provider shall then file Form 123 with the Division and payor.

1. Form 123 must be completed and filed for every initial visit for which a bill is generated, including first aid, when the worker reports that his or her medical condition is work related.

2. If initial medical care is provided by any health care provider other than a physician, Form 123 must be countersigned by the supervising physician.

B. Form 221, Restorative Services Authorization. Form 221, "Restorative Services Authorization Form" required by Subsection R612-300-5. C. 7. shall be filed with both the payor and the Division.

C. Forms 043, Employee's Intent to Leave State, and Form 044, Attending Physician's Statement. These forms are to be submitted to the Division before an injured worker leaves Utah.

D. Form 110, Release to Return to Work. Form 110 shall be mailed by either the health care provider or payor to the injured worker and Division within five calendar days after the health care provider releases the injured worker to return to work.

R612-300-4. General Method For Computing Medical Fees.

A. Adoption of "CPT" and "RBRVS." The Labor Commission hereby adopts and by this reference incorporates:

Optum360 Essential RBRVS 201[~~8~~]9 annual 1st Quarter Update," (edition includes RBRC1[~~8~~]9/U179[~~+~~]5 and U179[~~1R2~~]6) ("RBRVS" hereafter).

B. Medical fees calculated according to the RBRVS relative value unit assigned to each CPT code. Unless some other provision of these rules specifies a different method, the RBRVS is to be used in conjunction with the "conversion factors" established in subsection C. of this rule to calculate payments for medical care provided to injured workers.

C. Conversion Factors. Fees for medical care of injured workers shall be computed by determining the relative value unit ("RVU") assigned by the RBRVS to a CPT code and then multiplying that RVU by the following conversion factors for specific medical specialties:

1. Anesthesiology (1 unit per 15 minutes of anesthesia): $6[~~2~~]8.00;

2. Medicine (Evaluation and Medicine codes 99203-99204 and 99213-99214): $56.00;

3. Medicine (all other Evaluation and Medicine codes): $52

4. Pathology and Laboratory: $56.00;

5. Radiology: $58.00;

6. Restorative Services: $50.00;

7. Surgery (all 20000 codes, codes 49505 thru 49525, and all 60000 codes): $65.00;

8. Other Surgery: $[~~4~~]53.00.

D. Fees for Medical care not addressed by CPT/RBRVS, or requiring unusual treatment.

1. The payor and medical provider may establish and agree to a reasonable fee for medical care of an injured worker if:

a. neither the CPT/RBRVS or any other provision of these rules address the medical care in question; or

b. application of CPT/RBRVS or other provisions of these rules would result in an inadequate fee due to extraordinary difficulty of treatment.

2. If the medical provider and payor cannot agree to a reasonable fee in such cases, the provider can request a hearing before the Commission's Adjudication Division to establish a reasonable fee.

R612-300-5. Fees for Specific Procedures.

A. Needle procedures: Trigger point injections are reported per muscle. Payment under CPT code 20553 for injections of up to three muscles is the maximum allowed for any one treatment session, regardless of the number of muscles treated.

B. Radiology.

1. The cost of radioisotopes, gadolinium and comparable materials may be charged at the provider's cost plus 15%.

2. When x-rays are reviewed as part of an independent evaluation of the patient, a consultation, or other office visit, the review is included as a part of the basic service to the patient and may not be billed separately.

C. Restorative Services.

1. The following criteria must be met before payment is allowed for restorative services:

a. The patient's condition must have the potential for restoration of function;

b. The treatment must be prescribed by the treating physician;

c. The treatment must be specifically targeted to the patient's condition; and

d. The provider must be in constant attendance during the providing of treatment.

2. No payment is allowed for CPT codes 97024, diathermy; 97026, infrared therapy; 97028, ultraviolet therapy/cold laser therapy; 97169, athletic training evaluations; 97172, athletic training reevaluation.

3. All restorative services provided must be itemized even if not billed.

4. Medical providers billing under CPT codes 97161 through 97610 are limited to payment for a maximum of three procedures/units per visit, or six procedures if different sites are treated. Services billed under CPT codes 97545, 97546 and 97150 require preauthorization and are limited to 4 units per injury. The payor shall pay the three highest valued procedures for each treatment site for the visit.

5. Patient education is to be billed using CPT code 97535 rather than codes 98960 through 98962, and is limited to 4 units per injury claim.

6. The entire spine is considered to be a single body part or unit. For that reason, CPT codes 98941 through 98943 and 98926 through 98929 may not be used for billing purposes.

7. When a change in treatment or a new RSA is required, physicians and physical therapists may bill for one evaluation and up to 2 modalities/procedures. Without an evaluation, they may bill for up to 3 modalities/procedures. With prior authorization from the payor, physicians and physical therapists may make additional billing when justified by special circumstances.

8. Any medical provider billing for restorative services shall file the appropriate version of Form 221, "Restorative Services Authorization (RSA) form" with the payor and the Division within ten days of the initial evaluation. Subjective/objective/ assessment/plan ("SOAP") notes are to be sent to the payor in addition to the RSA form. SOAP notes are not to be sent to the Division unless requested.

a. Upon receipt of the provider's RSA form and SOAP notes, the payor shall respond within ten days by authorizing a specified number of treatments or denying the request. No more than eight treatments may be provided during this ten-day authorization period.

b. A payor may deny the requested treatments for the following reasons:

i. The injury or disease being treated is not work related; or

ii. The payor has received written medical opinion or other medical information indicating the treatment is not necessary. A copy of such written opinion or information must be provided to the injured worker, the medical provider, and the Division.

c. In cases where approval is received for initial treatment, the provider shall submit updated RSA forms and SOAP notes to the payor for approval or denial at least every six treatments.

d. An injured worker or provider may request a hearing before the Division of Adjudication to resolve issues of compensability, necessity of treatment, and compliance with this subsection's time limits.

D. Functional Capacity Evaluations. The following functional capacity evaluations require payor preauthorization and are billed in 15 minute increments under CPT code 97750:

1. A limited functional capacity evaluation to determine an injured worker's dynamic maximal repetitive lifting, walking, standing and sitting tolerance. Billing for this type of evaluation is limited to a maximum of 45 minutes.

2. A full functional capacity evaluation to determine an injured worker's maximum and repetitive lifting, walking, standing, sitting, range of motion, predicted maximal oxygen uptake, as well as ability to stoop, bend, crawl or perform work in an overhead or bent position. In addition, this evaluation includes reliability and validity measures concerning the individual's performance. Billing for this type of evaluation is limited to a maximum of 2.5 hours.

3. A work capacity evaluation to determine an injured worker's capabilities based on the physical aspects of a specific job description. Billing for this type of evaluation is limited to a maximum of 2 hours.

4. A job analysis to determine the physical aspects of a particular job. Billing is not subject to a maximum time limit due to the variability of factors involved in the analysis.

E. Impairment Ratings and Insurance Medical Examinations.

1. Impairment Rating by Treating Physician. Treating physicians shall bill for preparation of impairment ratings under CPT code 99455, with 2.0 RVU assigned/30 minutes.

2. Impairment Rating by Non-Treating Physician. Non-treating physicians may bill for preparation of impairment ratings under CPT code 99456, with 2.65 RVU assigned/30 minutes.

3. Medical Evaluations Commissioned by Payors. The Labor Commission does not regulate fees for medical evaluations requested by payors.

F. Transcutaneous Electrical Nerve Simulators (TENS). No fee is allowed for TENS unless it is prescribed by a physician and supported by prior diagnostic testing showing the efficacy of TENS in control of the patient's chronic pain. TENS testing and training is limited to four (4) sessions and a 30-day trial period but may be extended with written documentation of medical necessity.

G. Electophysiologic Testing. A physician who is legally authorized by his or her medical practice act to diagnose injury or disease is entitled to the full fee for electrophysiologic testing. Physical therapists and physicians who are qualified to perform such testing but who are not legally authorized to diagnose injury or disease are entitled to payment of 75% of the full fee.

H. Dental Injuries.

1. Initial Treatment.

a. If an employer maintains a medical staff or designates a company doctor, an employee requiring treatment for a workplace dental injury shall report to such medical staff or doctor and follow their directions for obtaining the necessary dental treatment.

b. If an employer does not maintain a medical staff or designate a company doctor, or if such medical staff or doctor is unavailable, the injured worker may obtain the necessary dental care from a dentist of his or her choice. The payor shall pay the dentist at 70% of UCR for services rendered.

2. Subsequent treatment.

a. If additional dental care is necessary, the dentist who provided initial treatment may submit to the payor a request for authorization to continue treatment. The transmission date of the request must be verifiable. The request itself must include a description of the injury, the additional treatment required, and the fee to be charged for the additional treatment.

i. The payor shall respond to the request for authorization within 10 working days of the request's transmission. This 10-day period can be extended with written approval of the Director of the Industrial Accidents Division.

ii. If the payor does not respond to the dentist's request for authorization within 10 working days, the dentist may proceed with treatment and the payor shall pay the cost of treatment as contained in the request for authorization.

iii. If the payor approves the proposed treatment, the payor shall send written authorization to the dentist and injured worker. This authorization shall include the amount the payor agrees to pay for the treatment. If the dentist accepts the payor's payment offer, the dentist may proceed to provide the approved services and shall be paid the agreed upon amount.

iv. If the dentist proceeds with treatment without authorization, the dentist's fee is limited to 70% of UCR.

b. If the dentist who provided initial treatment is unwilling to provide subsequent treatment under the terms outlined in subsection 2.a., above, the payor shall within 20 calendar days direct the injured worker to a dentist located within a reasonable travel distance who will accept the payor's payment offer.

i. If, after receiving notice that the payor has arranged for the services of a dentist, the injured worker chooses to obtain treatment from a different dentist, the payor shall only be liable for payment at 70% of UCR. The treating dentist may bill the injured worker for the difference between the dentist's charges and the amount paid by the insurer.

c. If the payor is unable to locate another dentist to provide the necessary services, the payor shall attempt to negotiate a satisfactory reimbursement with the dentist who provided initial treatment.

I. Drug testing. Drug screenings for addictive classes of pain medications shall be performed as recommended in the Utah clinical Guidelines on Prescribing Opiates for Treatment of Pain, Utah Department of Health 2009. The collection and billing shall be limited to one 80305, 80306, or 80307 code per date of service, except for unusual circumstances.

J. Procedures for which no fee is allowed. Due to a lack of evidence of medical efficacy, no payment is authorized for the following:

1. Muscle Testing, CPT codes 95832 through 95857;

2. Computer based Motion Analysis, CPT codes 96000 through 96004;

3. Athletic Training Evaluation, CPT codes 97169 to 97172;

4. Acupuncture, CPT codes 97810 through 97814;

5. Analysis of Data, now BR, CPT code 99090;

6. Patient Education, CPT codes 98960 through 98962;

7. Educational supplies, CPT code 99071; or

8. [~~Artificial dises, p~~]Percutaneous diskectomies, endoscopic diskectomies, IDEPT, platelet rich plasma injections, [~~thermo-rhizotomies and other~~]and heat or chemical treatments for discs.

R612-300-6. Limitations on Fees for Specific Medical Providers and Non-Physicians.

A. Physician Assistants, Nurse Practitioners, Medical Social Workers, Nurse Anesthetists, and Physical Therapy Assistants. Fees for services performed by physician assistants, nurse practitioners, medical social workers, nurse anesthetists, and physical therapy assistants are set at 75% of the amount that would otherwise be allowed by these rules and shall be billed using an 83 modifier.

B. Assistant Surgeons. Fees for assistant surgeons are limited as follows:

1. Medical doctors, osteopaths and podiatrists, designated with an -80 modifier, are to be paid 20% of the primary surgeon's fee;

2. Minimum paramedicals, designated with an -81 modifier, are to be paid 15% of the primary surgeon's value or 75% of the amount allowed under subsection B. 1., above.

3. When a qualified resident surgeon is not available, 20% of the primary surgeon's fee;

4. Other paramedical assistants, such as surgical assistants, are not billed separately.

C. Home health care. The following fees, which include mileage and travel time, are payable for Home Health Codes 99500 through 99602:

1. RN: $100/ 2 hours

2. LPN: $75 / 2 hours

3. Home Health Aide: $25 / hour + $6 additional 30 min.

4. Speech Therapists: $80 / visit

5. Physical Therapy: $125/ hour

6. Occupational Therapy: $125/ hour

7. Home Infusion Providers are to be paid according to contract between the payor and home infusion provider. If no contract is established, the payor shall pay the amount specified in Days Guidelines and pay UCR or Cost + 15% for the drugs and supplies.

D. Acupuncturists, naturopathic providers and massage therapy. Payor preauthorization is required for any services provided by acupuncturists and naturopaths. Payment for massage therapy is only allowed when administered by a medical provider and billed according to the requirements of Rule R612-300. 5. C, "Restorative Services."

E. Ambulance. Ambulance charges are limited to the rates set by the State Emergency Medical Service Commission.

R612-300-7. Billing and Payment.

A. Billing Limitations.

1. Except as otherwise provided by a specific provision of the Workers' Compensation Act or these rules, an injured worker may not be billed for the cost of medical care necessary to treat his or her workplace injuries.

2. A health care provider may not submit a bill for medical care of an injured worker to both the employer and the insurance carrier.

B. Discounting and down-coding.

1. Discounting or reducing the fees established by these rules is permitted only pursuant to a specific contract between the medical provider and payor.

2. A payor may change the CPT code submitted by a health care provider under the following circumstances:

a. The submitted code is incorrect;

b. Another code more closely identifies the medical care;

c. The medical provider has not submitted the documentation necessary to support the code; or

d. The medical care is part of a larger procedure and included in the fee for that procedure.

3. If a payor changes a code number, the payor shall explain the reason for the change and provide the name and phone number of the payor's claims processor to the medical provider in order to allow further discussion.

C. Place of Treatment. A medical provider's billing for a medical procedure must identify the setting where a procedure was performed.

1. In an office or clinic: Fees for procedures performed in an office or clinic are to be computed using the Non-Facility Total RVU.

2. In a facility setting: Fees for physician services for procedures performed in a facility are to be computed using the "Facility Total RVU," as the facility will be billing for the direct and indirect costs related to the service.

D. Separate Bills. Separate bills must be presented by each medical provider within [~~30 days~~]one year of [~~treatment~~]the date of service on a HCFA 1500 billing form. All bills must contain the federal ID number of the provider submitting the bill.

E. Hospital Fees.

[~~1. The Labor Commission does not have authority to set fees for hospital care of injured workers. However, hospitals are subject to the Commission's reporting requirements, and fees charged by health care providers for services performed in a hospital are subject to the Commission's fee rules.~~]

[~~2~~]1. Fees covering hospital care shall be separate from those for professional services and shall not extend beyond the actual necessary hospital care.

[~~3~~]2. All billings must be submitted on a UB92 form, properly itemized and coded, and shall include all documentation, including discharge summary, necessary to support the billing. No separate fee may be charged for billing or documentation of hospital services.

3. Fees charged by health care providers for services performed in a hospital are subject to the Commission's fee rules.

F. Charges for Supplies, Materials, or Drugs.

1. Ordinary supplies, materials or drugs used in treatment shall not be charged separately but shall be included in the amount allowed for the underlying medical care.

2. Special or unusual supplies, materials, or drugs not included as a normal and usual part of the service or procedure may be billed at cost plus 15% restocking fees and any taxes paid.

G. Miscellaneous.

1. A physician may bill the new patient E and M code when seeing an established patient for a new work injury.

2. Payment for hospital care is limited to the bed rate for semi-private room unless a private room is medically necessary.

3. Non-facility RVS total unit values apply, except that procedures provided in a facility setting shall be reimbursed at the facility total unit value and the facility may bill a separate facility charge.

4. Items that are a portion of an overall procedure are NOT to be itemized or billed separately.

5. Payors may round charges to the nearest dollar. If this is done on some charges, it must be done with all charges.

H. Prompt Payment and Interest.

1. All bills for medical care of injured workers must be paid within 45 days of submission to the payor unless the bill or some portion of the bill is in dispute. Any portion of the bill not in dispute remains payable within 45 days of billing.

2. As required by Section 34A-2-420 of the Utah Workers' Compensation Act, any award for medical care made by the Commission shall include interest at 8% per annum from the date of billing for such medical care.

I. Billing Disputes. Payors and health care providers shall use the following procedures to resolve billing disputes.

1. The provider shall submit a bill for services with supporting documentation to the payor within one year of the date of service.

2. The payor shall evaluate the bill and pay the appropriate fee as established by these rules.

3. If the provider believes the payor has improperly computed the fee, the provider may submit a written request for reevaluation to the payor. The request shall describe the specific areas of disagreement and include all appropriate documentation. Any such request for re-evaluation must be submitted to the payor within one year of the date of the original payment.

4. Within 30 days of receipt of the request for re-evaluation, the payor shall either pay the additional fee due the provider or respond with a specific written explanation of the basis for its denial of additional fees. The payor shall maintain proof of transmittal of its response.

5. A payor seeking reimbursement from a provider for overpayment of a bill shall, within one year of the overpayment, submit to the provider a written request for repayment that explains the basis for request. Within 90 days of receipt of the request, the provider shall either make appropriate repayment or respond with a specific written denial of the request.

6. If the provider and payor continue to disagree regarding the proper fee, either party may request informal review of the matter by the Division. Any party may also file a request for hearing on the dispute with the Adjudication Division.

R612-300-8. Travel Allowance for Injured Workers.

A. Payment for Travel to Obtain Medical Care. An injured worker who must travel outside his or her community to obtain necessary medical care is entitled to payment of meals and lodging. An injured worker is entitled to other travel expenses regardless of distance. Payors shall reimburse injured workers for these expenses according to the standards set forth in State of Utah Accounting Policies and Procedures, Section FIACCT 10-02.00, "Travel Reimbursement".

1. All travel must be by the most direct route and to the nearest location where adequate treatment is reasonably available.

2. Travel may not be required between the hours of 10:00 p.m. and 6:00 a.m., unless approved by the Commission.

B. Time Limits for Requesting and Paying Travel Expenses.

1. Requests for travel reimbursement must be submitted to the payor for payment within one year after the subject travel expenses were incurred;

2. The payor must pay an injured employee's travel expenses at the earlier of:

a. Every three months;

b. Upon accrual of $100 in such expense; or

c. At closure of the injured worker's claim.

C. Prescriptions. Travel allowance shall not include picking up prescriptions with the following exceptions:

1. Travel allowance will be allowed if documentation is provided substantiating a claim that prescriptions cannot be obtained locally within the injured worker's community;

2. Travel allowance will be allowed in instances where dispensing laws do not allow a medication to be called in to a pharmacy thus requiring an injured worker to physically obtain an original prescription from the provider's office.

R612-300-9. Permanent Impairment Ratings.

A. Utah's 2006 Impairment Guides. The "Utah 2006 Impairment Guides" are incorporated by reference and are to be used to rate a permanent impairment not expressly listed in Section 34A-2-412 of the Utah Workers' Compensation Act.

B. American Medical Association's "Guides to the Evaluation of Permanent Impairment, Fifth Edition." For those permanent impairments not addressed in either Section 34A-2-412 or the "Utah 2006 Impairment Guides," impairment ratings are to be established according to the American Medical Association's "Guides to the Evaluation of Permanent Impairment, Fifth Edition."

R612-300-10. Medical Records.

A. Relationship between HIPAA and Workers' Compensation Disclosure Requirements. Workers' compensation insurers, employers and the Utah Labor Commission need access to health information of individuals who are injured on the job or who have a work-related illness in order to process or adjudicate claims, or to coordinate care under Utah's workers' compensation system. Generally, this health information is obtained from health care providers who treat these individuals and who may be covered by federal "HIPAA" privacy rules.

The HIPAA Privacy Rule specifically recognizes the legitimate need of the workers' compensation system to have access to individuals' health information to the extent authorized by State law. See 45 CFR 164.512(1). The Privacy Rule also recognizes the importance of permitting disclosures required by other laws. See 45

CFR 164.512(a). Therefore, disclosures permitted by this rule for workers' compensation purposes or otherwise required by this rule do not conflict with and are not prohibited by the HIPAA Privacy Rule.

B. Disclosures Permitted Without Authorization. A medical provider, without authorization from the injured worker, shall:

1. For purposes of substantiating a bill submitted for payment or filing required Labor Commission forms, such as the "Physician's Initial Report of Injury/Illness" or the "Restorative Services Authorization," disclose medical records necessary to substantiate the billing, including drug and alcohol testing, to:

a. An employer's workers' compensation insurance carrier or third party administrator;

b. A self-insured employer who administers its own workers' claims.

c. The Uninsured Employers' Fund;

d. The Employers' Reinsurance Fund; or

e. The Labor Commission as required by Labor Commission rules.

2. Disclose medical records pertaining to treatment of an injured worker who makes a claim for workers' compensation benefits, to another physician for specialized treatment, to a new treating physician chosen by the claimant, or for a consultation regarding the claimed work related injury or illness.

C. Disclosures Requiring Authorization.

1. Except as limited in C(3), a medical provider, whose medical records are relevant to a worker's compensation claim, shall, upon receipt of a Labor Commission medical records release form, or an authorization form that conforms to HIPAA requirements, disclose his/her medical records to:

a. An employer's insurance carrier or third party administrator;

b. A self-insured employer who administers its own workers' compensation claims;

c. An agent of an entity listed in B(1)(a through e), which includes, but is not limited to a case manager or reviewing physician;

d. The Uninsured Employers Fund;

e. The Employers' Reinsurance Fund;

f. The Labor Commission;

g. The injured worker;

h. An injured workers' personal representative;

i. An attorney representing any of the entities listed above in an industrial injury or occupational disease claim.

2. Medical records are relevant to a workers' compensation claim if:

a. The records were created after the reported date of the accident or onset of the illness for which workers' compensation benefits have been claimed; or

b. the records were created in the past ten years (15 years if permanent total disability is claimed) and:

i. There is a specific reason to suspect that the medical condition existed prior to the reported date of the claimed work related injury or illness or;

ii. The claim is being adjudicated by the Labor Commission.

3. Medical records related to care provided by a psychiatrist, psychologist, obstetrician, or care related to the reproductive organs may not be disclosed by a medical provider unless a claim has been made for a mental condition, a condition related to the reproductive organs, or the claimant has signed a separate, specific release for these records.

D. Disclosure Regarding Return to Work. A medical provider, who has treated an injured worker for a work related injury or illness, shall disclose information to an injured workers' employer as to when and what restrictions an injured worker may return to work.

E. Additional Disclosures Requiring Specific Approval. Requests for medical records beyond what subsections B, C, and D permit require a signed approval by the director, the medical director, a designated person(s) within the Industrial Accidents Division or an administrative law judge if the claim is being adjudicated.

F. Appeals. A party affected by the decision made by a person in subsection E may appeal that decision to the Adjudication Division of the Labor Commission.

G. Injured Worker's Duty to Disclose Medical Treatment and Providers. Upon receipt and within the scope of this rule, an injured worker shall provide those entities or persons listed in C(1) the names, address, and dates of medical treatment (if known) of the medical providers who have provided medical care within the past 10 years (15 years for permanent total disability claim) except for those medical providers names in C(3). Labor Commission form number 307 "Medical Treatment Provider List" must be used for this purpose. Parties listed in C(1) of this rule must provide each medical provider identified on form 307 with a signed authorization for access to medical records. A copy of the signed authorization may be sent to the medical providers listed on form 307.

H. Injured Worker's Right to Contest Requests for Pre-Injury Medical Records. An injured worker may contest, for good reason, a request for medical records created prior to the reported date of the accident or illness for which the injured worker has made a claim for benefits by filing a complaint with the Labor Commission. Good reason is defined as the request has gone beyond the scope of this rule or sensitive medical information is contained in a particular medical record.

I. Limitations on Use and Re-disclosure of Medical Information.

1. Any party obtaining medical records under authority of this rule may not disclose those medical records, without a valid authorization, except as required by law.

2. An employer may only use medical records obtained under the authority of this rule to:

a. Pay or adjudicate workers' compensation claims if the employer is self-insured;

b. To assess and facilitate an injured workers' return to work;

c. As otherwise authorized by the injured worker.

3. An employer obtaining medical records under authority of this rule must maintain the medical records separately from the employee's personnel file.

4. Any medical records obtained under the authority of this rule to make a determination regarding the acceptance of liability or for treatment of a condition related to a workers' compensation claim shall only be used for workers' compensation purposes and shall not be released, without a signed release by the injured worker or his/her personal representative, to any other party. An employer shall make decisions related only to the workers' compensation claim based on any medical information received under this rule.

K. Permissible Fees for Providing Medical Records. When any medical provider provides copies of medical records, other than the records required when submitting a bill for payment or as required by the Labor Commission rules, the following charges are presumed reasonable:

1. A search fee of $15 payable in advance of the search;

2. Copies at $.50 per page, including copies of microfilm, payable after the records have been prepared and

3. Actual costs of postage payable after the records have been prepared and sent. Actual cost of postage is deemed to be the cost of regular mail unless the requesting party has requested the delivery of the records by special mail or method.

4. The Labor Commission will release its records per the above charges to parties/entities with a signed and notarized release from the injured worker unless the information is classified and controlled under the Government Records Access and Management Act (GRAMA).

5. No fee shall be charged when the RBRVS or the Commission's Medical Fee Guidelines require specific documentation for a procedure or when medical providers are required to report by statute or rule.

6. An injured worker or his/her personal representative may obtain one copy of each of the following records related to the industrial injury or occupational disease claim, at no cost, when the injured worker or his/her personal representative have signed a form by the Industrial Accidents Division to substantiate his/her industrial injury/illness claim;

a. History and physical;

b. Operative reports of surgery;

c. Hospital discharge summary;

d. Emergency room records;

e. Radiological reports;

f. Specialized test results; and

g. Physician SOAP notes, progress notes, or specialized reports.

h. Alternatively, a summary of the patients records may be made available to the injured worker or his/her personal representative at the discretion of the physician.

R612-300-11. Utilization Review Standards.

A. Purpose of Utilization Review and Definitions.

1. "Utilization Review" is used to manage medical costs, improve patient care and enhance decision-making. Utilization review includes, but is not limited to, the review of requests for authorization and the review of medical bills to determine whether the medical services were or are necessary to treat a workplace injury. Utilization review does not include:

a. bill review for the purpose of determining whether the medical services rendered were accurately billed, or

b. any system, program, or activity used to determine whether an individual has sustained a workplace injury.

2. Any utilization review system shall incorporate a two-level review process that meets the criteria set forth in subsections B and C of this rule.

3. Definitions. As used in this rule:

a. "Request for Authorization" means any request by a physician for assurance that appropriate payment will be made for a course of proposed medical treatment.

b. "Reasonable Attempt" requires at least two phone calls and a fax, two phone calls and an e-mail, or three phone calls, within five business days from date of the payor's receipt of the physician's request for review.

B. Level I - Initial Request and Review.

1. A health care provider may use Form 223 to request authorization and payment for proposed medical treatment. The provider shall attach all documentation necessary for the payor to make a decision regarding the proposed treatment.

a. Requests for approval of restorative services are governed by the provisions of Section R612-300.5. C. 7. which requires submission of the appropriate RSA form and documentation.

2. Upon receipt of the provider's request for authorization, the payor may use medical or non-medical personnel to apply medically-based criteria to determine whether to approve the request. The payor must:

a. Within 5 business days after receiving the request and documentation, transmit Form 223 back to the physician, in a verifiable manner, advising of the payor's approval or denial of the proposed treatment.

i. If approval is denied, the payor must include with its denial a statement of the criteria it used to make its determination. A copy of the denial must also be mailed to the injured worker.

C. Level II - Review.

1. A health care provider who has been denied authorization or has received no timely response may request a physician's review by completing and sending the applicable portion of Commission Form 223 to the payor.

a. The provider must include the times and days that he/she is available to discuss the case with the reviewing physician, and must be reasonably available during normal business hours.

b. This request for review may be used by a health care provider who has been denied authorization for restorative services pursuant to Subsection R612-300-5.C.7.

2. The payor's physician representative must complete the review within five business days of the treating physician's request for review. Additional time may be requested from the Commission to accommodate highly unusual circumstances or particularly difficult cases.

a. The insurer's physician representative must make a reasonable effort to contact the requesting provider to discuss the request for treatment. The payor shall notify the Commission if an additional five days is needed in order to contact the treating physician or to review the case.

b. If the payor again denies approval of the recommended treatment, the payor must complete the appropriate portion of Commission Form 223, and shall include:

i. the criteria used by the payor in making the decision to deny authorization; and

ii. the name and specialty of the payor's reviewing physician;

iii. appeals information.

c. The denial to authorize payment for treatment must then be sent to the physician, the injured worker and the Commission.

3. The payor's failure to respond to the review request within five business days, by a method which provides certification of transmission, shall constitute authorization for payment of the treatment.

D. Mediation and Adjudication. Upon receipt of denial of authorization for payment for medical treatment at Level II, the Commission will facilitate, upon the request of the injured worker, the final disposition of the case.

1. If the parties agree, the medical dispute will be referred to Commission staff for mediation.

2. If the parties do not agree to mediation, the matter will be referred to the Division of Adjudication for hearing and decision.

E. Reduction of Fee for Failure to Follow Utilization Review Standards.

1. In cases in which a health care provider has received notice of this rule but proceeds with non-emergency medical treatment without obtaining payor authorization, the following shall apply:

a. If the medical treatment is ultimately determined to be necessary to treat a workplace injury, the fee otherwise due the health care provider shall be reduced by 25%.

b. If the medical treatment is ultimately determined to be unnecessary to treat a workplace injury, the payor is not liable for payment for such treatment. The injured worker may be liable for the cost of treatment.

2. The penalty provision in D. 1. shall not apply if the medical treatment in question has been preauthorized by some other non-worker's compensation insurance company or other payor.

R612-300-12. Commission Approval of Health Care Treatment Protocols.

A. Authority. Pursuant to authority granted by Subsection 34A-2-111(2)(c)(i)(B)(VII) of the Utah Workers' Compensation Act, the Utah Labor Commission establishes the following standards and procedures for Commission approval of medical treatment and quality care guidelines.

B. Standards

1. Scientifically based: Subsection 34A-2-111(2)(c)(i)(B)(VII)(Aa) of the Act requires that guidelines be scientifically based. The Commission will consider a guideline to be "scientifically based" when it is supported by medical studies and/or research.

2. Peer reviewed: Subsection 34A-2-111(2)(c)(i)(B)(VII)(Bb) of the Act requires that guidelines be peer reviewed. The Commission will consider a guideline to be "peer reviewed" when the medical study's content, methodology, and results have been reviewed and approved prior to publication by an editorial board of qualified experts.

3. Other standards: Pursuant to its rulemaking authority under Subsection 34A-2-111(2)(c)(i)(B)(VII), the Utah Labor Commission establishes the following additional standards for medical treatment and quality care guidelines.

a. The guidelines must be periodically updated and, subject to Commission discretion, may not be approved for use unless updated in whole or in part at least biannually;

b. Guideline sources must be identified;

c. The guidelines must be reasonably priced;

d. The guidelines must be easily accessible in print and electronic versions.

C. Procedure: Pursuant to Subsection 34A-2-111(2)(c)(i)(B)(VII) of the Utah Workers' Compensation Act, a party seeking Commission action to approve or disapprove a guideline shall file a petition for such action with the Labor Commission.

R612-300-13. HIV, Hepatitis B and C Testing and Reporting for Emergency Medical Service Providers.

A. Purpose and Authority. This rule, established pursuant to U.C.A. Section 78B-8-404, establishes procedures for testing and reporting following a significant exposure of an emergency medical services provider to infectious diseases.

B. Definitions. In addition to the terms defined in Section 78B-8-401, the following definitions apply for purposes of this rule.

1. Contact means designated person(s) within the emergency medical services agency or the employer of the emergency medical services provider.

2. Emergency medical services (EMS) agency means an agency, entity, or organization that employs or utilizes emergency medical services providers as defined in (4) as employees or volunteers.

3. Source Patient means any individual cared for by a pre-hospital emergency medical services provider, including but not limited to victims of accidents or injury, deceased persons, prisoners or persons in the custody of the Department of Corrections, a county correctional facility, or a public law enforcement entity.

4. Receiving facility means a hospital, health care or other facility where the patient is delivered by the emergency medical services provider for care.

C. Emergency Medical Services Provider Responsibility.

1. The EMS provider shall document and report all significant exposures to the receiving facility and contact as defined in C.2.

2. The reporting process is as follows:

a. The exposed EMS provider shall complete the Exposure Report Form (ERF) at the time the patient is delivered to the receiving facility and provide a copy to the person at the receiving facility authorized by the facility to receive the form. In the event the exposed EMS provider does not accompany the source patient to the receiving facility, he/she may report the exposure incident, with information requested on the ERF, by telephone to a person authorized by the facility to receive the form. In this event, the exposed EMS provider shall nevertheless submit a written copy of the ERF within three days to an authorized person of the receiving facility.

b. The exposed EMS provider shall, within three days of the incident, submit a copy of the ERF to the contact as defined in C.2.

D. Receiving Facility Responsibility.

1. The receiving facility shall establish a system to receive ERFs as well as telephoned reports from exposed EMS providers on a 24-hour per day basis. The facility shall also have available or on call, trained pre-test counselors for the purpose of obtaining consent and counseling of source patients when HIV testing has been requested by EMS providers. The receiving facility shall contact the source patient prior to release from the facility to provide the individual with counseling or, if unable to provide counseling, provide the source patient with phone numbers for a trained counselor to provide the counseling within 24 hours.

2. Upon notification of exposure, the receiving facility shall request permission from the source patient to draw a blood sample for disease testing. In conjunction with this request, the source patient must be advised of his/her right to refuse testing and be advised that if he/she refuses to be tested that fact will be forwarded to the EMS agency or employer of EMS provider. The source patient shall also be

advised that if he/she refuses to be tested, the EMS agency or provider may seek a court order to compel the source patient to submit to a blood draw for the disease testing.

Testing is authorized only when the source patient, his/her next of kin or legal guardian consents to testing, with the exception that consent is not required from an individual who has been convicted of a crime and is in the custody or under the jurisdiction of the Department of Corrections, a county correctional facility, a public law enforcement entity, or if the source patient is dead. If consent is denied, the receiving facility shall complete the ERF and send it to the EMS agency or employer of the EMS provider. If consent is received, the receiving facility shall draw a sample of the source patient's blood and send it, along with the ERF, to a qualified laboratory for testing.

3. The laboratory that the receiving facility has sent source patient's blood draw to shall send the disease test results, by Case ID number, to the EMS agency or employer of the EMS provider.

F. EMS Agency/Employer Responsibility:

1. The EMS agency/employer, upon receipt of the disease tests, from the receiving facility laboratory, shall immediately report the result, by case number, not name, to the exposed EMS provider.

2. The EMS agency/employer, upon the receipt of refusal of testing by the source, shall report that refusal to the EMS provider.

3. The agency/employer or its insurance carrier shall pay for the EMS provider and the source patient testing for the covered diseases per the Labor Commission fee schedule.

4. The EMS agency/employer shall maintain the records of any disease exposures contained in this rule per the OSHA Blood Borne Pathogen standards.

R612-300-14. Advance Practice Registered Nurse.

A. Authority. This rule is enacted under the authority of 34A-1-104 and 58-31b-803.

B. Requirement. An advanced practice registered nurse who treats an injured worker and prescribes Schedule II controlled substances for chronic pain is subject to the provisions of the "Model Policy on the Use of Opioid Analgesics in the Treatment of Chronic Pain," July 2013, adopted by the Federation of State Medical Boards, which is incorporated by reference.

KEY: workers' compensation, fees, medical practitioners, nurse practitioners
Date of Enactment or Last Substantive Amendment: [~~January 1,~~] 2019
Notice of Continuation: February 8, 2018
Authorizing, and Implemented or Interpreted Law: 34A-1-104; 34A-2-201

Labor Commission, Industrial Accidents
R612-400-5
Premium Rates for the Uninsured Employers' Fund and the Employers' Reinsurance Fund

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 44159
FILED: 10/30/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Workers' compensation insurance premiums in Utah include assessments to fund the Employer's Reinsurance Fund (ERF) and the Uninsured Employers' Fund (UEF). These assessment rates are reviewed annually, and amended as appropriate, in order to ensure the funds remain viable and are fully funded. These proposed changes establish these assessment rates for the 2020 calendar year.

SUMMARY OF THE RULE OR CHANGE: This rule filing establishes the premium rates for 2020 at 0.50% for the Uninsured Employers' Fund and 1.5% for the Employers' Reinsurance Fund. This is an overall decrease in the rates of 0.25%.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 59-9-101(2)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There will be a cost savings to the state budget as the overall premium rate will go down.
♦ LOCAL GOVERNMENTS: There will be a cost savings to local governments as the overall premium rate will go down.
♦ SMALL BUSINESSES: There will be cost savings to small businesses as the overall premium rate will go down.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: It is not anticipated that there will be a cost or savings to persons other than small businesses, businesses, or local government entities, because the assessment is against workers' compensation insurance premiums paid by employers.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be an overall cost savings to affected persons, because the assessment rate will go down by 0.25%.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be an overall cost savings to affected persons, because the assessment rate will go down by 0.25%.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
LABOR COMMISSION
INDUSTRIAL ACCIDENTS
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:
♦ Christopher Hill by phone at 801-530-6113, by FAX at 801-530-6390, or by Internet E-mail at chill@utah.gov
♦ Ron Dressler by phone at 801-530-6841, by FAX at 801-530-6804, or by Internet E-mail at rdressler@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/16/2019

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

AUTHORIZED BY: Jaceson Maughan, Commissioner

Appendix 1: Regulatory Impact Summary Table*

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

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

Appendix 2: Regulatory Impact to Non-Small Businesses
There will be an overall cost savings of 0.25% because the overall rates have decreased. Because there are many factors that play into workers' compensation insurance premiums, the exact dollar amount of the savings is inestimable.

Commissioner Jaceson R. Maughan has reviewed and approved this fiscal analysis.

R612. Labor Commission, Industrial Accidents.
R612-400. Workers' Compensation Insurance, Self-Insurance and Waivers.
R612-400-5. Premium Rates for the Uninsured Employers' Fund and the Employers' Reinsurance Fund.

A. Pursuant to Section 59-9-101(2), Section 59-9-101.3 and 34A-2-202 the workers' compensation premium rates effective January 1, 20[~~19~~]20, as established by the Labor Commission, shall be:

1. 0.[~~25~~]50% for the Uninsured Employers' Fund;
2. [~~2.0~~]1.5% for the Employers' Reinsurance Fund;

B. The premium rates are a percentage of the total workers' compensation insurance premium income as detailed in Section 59-9-101(2)(a).

KEY: workers' compensation, insurance, rates, waivers
Date of Enactment or Last Substantive Amendment: [~~January 1,~~] 2019
Notice of Continuation: February 8, 2018
Authorizing, and Implemented or Interpreted Law: 59-9-101(2)

Labor Commission, Occupational Safety and Health
R614-1
General Provisions

NOTICE OF PROPOSED RULE
(Repeal and Reenact)
DAR FILE NO.: 44170
FILED: 10/31/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule change is to remove duplicate and nonsubstantial parts of the rule, to add definitions, to clarify the existing rule, and to incorporate the July 1, 2018, version of the Code of Federal Regulations (CFR), which will include incorporating 29 CFR 1910.1024 and 29 CFR 1926.1124.

SUMMARY OF THE RULE OR CHANGE: The first change is in 29 CFR 1910.1024 and 29 CFR 1926.1124 where there are new beryllium standards. These standards will have new permissible exposure limits of 0.2 micrograms of beryllium per cubic meter of air (0.2 micrograms/m3) as an 8-hour time-weighted average and 2.0 micrograms/m3 as a short-term

exposure limit determined over a sampling period of 15 minutes. They also include other provisions to protect employees, such as requirements for exposure assessment, methods for controlling exposure, respiratory protection, personal protective clothing and equipment, housekeeping, medical surveillance, hazard communication, and record keeping. The second change is defining disabling, serious, or significant injury. The third change is deleting duplicate definitions (found in incorporated standards or Utah Occupational Safety and Health (OSH) Act). The fourth change is deleting language referring to workers' compensation coverage and benefits. The fifth change is deleting language either duplicated in Rule R614-1 or incorporated by Section R614-1-4. The sixth change is moving language into appropriate sections of Rule R614-1. The seventh change is removing language containing recommendations, "should" and other nonsubstantial verbiage. The eighth change is removing language related to intoxicated persons and intoxicating liquor. The ninth change is changing and making consistent names, titles, and acronyms. The tenth change is replacing reference from Standard Industrial Classification to North American Industry Classification. The eleventh change is separating and clarifying temporary variance requirements from permanent variance requirements. The twelfth change is removing interpretations of the provisions of Section 34A-6-203 of the Utah OSH Act.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 34A, Chapter 6

MATERIALS INCORPORATED BY REFERENCE:
- ♦ Adds 29 CFR 1926.1124, published by Government Printing Office, 07/01/2018
- ♦ Adds 29 CFR 1910.1024, published by Government Printing Office, 07/01/2018

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: Incorporation of 29 CFR 1910.1024 and 29 CFR 1926.1124: the fiscal impact on state government is inestimable due to the inability to determine how many employees in this sector will be covered under the beryllium standard. The North American Industry Classification System (NAICS) was used to determine employers that would be affected; the NAICS used by state government does not show work conducted by state government employees. Changes to Rule R614-1, with the exception of incorporation of 29 CFR 1910.1024 and 29 CFR 1926.1124 : there will be no fiscal impact.
♦ LOCAL GOVERNMENTS: Incorporation of 29 CFR 1910.1024 and 29 CFR 1926.1124: the fiscal impact on local governments is inestimable due to the inability to determine how many employees in this sector will be covered under the beryllium standard. The NAICS was used to determine employers that would be affected; the NAICS used by local governments does not show work conducted by local government employees. Changes to Rule R614-1, with the exception of incorporation of 29 CFR 1910.1024 and 29 CFR 1926.1124: there will be no fiscal impact.
♦ SMALL BUSINESSES: Incorporation of 29 CFR 1910.1024 and 29 CFR 1926.1124: anticipated fiscal cost = $358,561; anticipated fiscal benefit = $5,659,980; and net fiscal benefit = $5,301,419. Changes to Rule R614-1, with the exception of incorporation of 29 CFR 1910.1024 and 29 CFR 1926.1124: there will be no fiscal impact.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Covered under other categories.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Incorporation of 29 CFR 1910.1024 and 29 CFR 1926.1124: the annualized cost for affected non-small and small establishments will be approximately $12,726 and $4,845, respectively. The cost may be higher or lower based on activities conducted by establishments within the affected NAICS. Initial cost for affected persons may be higher due to the implementation of engineering controls and required programs in order to comply with the beryllium standard. Changes to Rule R614-1, with the exception of incorporation of 29 CFR 1910.1024 and 29 CFR 1926.1124: there will be no fiscal impact.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule will have a fiscal impact on businesses, however, to remain at least as effective as Federal OSHA and be able to retain Utah's State-Plan status, and to keep the employees of the state safe, these changes to this rule must be adopted.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
LABOR COMMISSION
OCCUPATIONAL SAFETY AND HEALTH
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:
♦ Cameron Ruppe by phone at 801-530-6898, or by Internet E-mail at cruppe@utah.gov
♦ Christopher Hill by phone at 801-530-6113, by FAX at 801-530-6390, or by Internet E-mail at chill@utah.gov
♦ Holly Lawrence by phone at 801-530-6494, by FAX at 801-530-7606, or by Internet E-mail at hlawrence@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/16/2019

THIS RULE MAY BECOME EFFECTIVE ON: 12/23/2019

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	$358,561	$358,561	$358,561
Non-Small Businesses	$50,904	$50,904	$50,904
Other Person	$0	$0	$0
Total Fiscal Costs:	**$409,465**	**$409,465**	**$409,465**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$5,659,980	$5,659,980	$5,659,980
Non-Small Businesses	$305,945	$305,945	$305,945
Other Persons	$197,977	$197,977	$197,977
Total Fiscal Benefits:	**$6,163,902**	**$6,163,902**	**$6,163,902**
Net Fiscal Benefits:	**$5,754,437**	**$5,754,437**	**$5,754,437**

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

Appendix 2: Regulatory Impact to Non-Small Businesses
This proposed rule repeal and reenactment clarifies the rule, removes redundant portions, and incorporates the Beryllium standards 29 CFR 1910.1024 and 29 CFR 1926.1124. As a result of adopting the beryllium standard, businesses affected by the standard will experience a fiscal cost associated with the implementation of controls, rule familiarization, exposure assessment, regulated areas, beryllium work areas, medical surveillance, medical removal, written exposure control plans, protective work clothing and equipment, hygiene areas and practices, housekeeping, training and respiratory protection programs.

There are approximately 150 non-small businesses in the industries in question (41 different NAICS) with approximately four of these establishments affected by the adoption of the beryllium standard. Of the NAICS that may be affected, two NAICS are in the construction industry (238320 and 238990). The majority of establishments affected by the beryllium standard are in general industry. (For a complete listing of NAICS Codes used in this analysis, please contact the agency).

The annualized cost per an affected non-small business entity is approximately $12,726. The cost per entity may be higher or lower based on activities conducted by establishments within the affected NAICS.

Monetized Benefits
Workers exposed to beryllium are at increased risk of developing chronic beryllium disease and lung cancer. Adoption of the beryllium standard is estimated to prevent 1 fatality and 0.5 new cases of chronic beryllium disease annually once the full effects are realized. The estimated cost of the rule is $409,465 annually. The monetized benefits, which includes benefits as a result of preventing fatalities and illnesses, as well as benefits to other parties, such as manufacturers and vendors who's services will be needed for employers to comply with the beryllium standard, are estimated to be $6,163,902 annually. This rule is estimated to generate an annual net benefit of approximately $5,754,437.

The Commissioner of the Labor Commission, Jaceson R. Maughan, has reviewed and approved this fiscal analysis.

R614. Labor Commission, Occupational Safety and Health.
R614-1. General Provisions.
[~~R614-1-1. Authority.~~

~~A. These rules and all subsequent revisions as approved and promulgated by the Labor Commission, Utah Occupational Safety and Health Division, are authorized pursuant to Title 34A, Chapter 6, Utah Occupational Safety and Health Act.~~

~~B. The intent and purpose of this chapter is stated in Section 34A-6-202 of the Act.~~

~~C. In accordance with legislative intent these rules provide for the safety and health of workers and for the administration of this chapter by the Utah Occupational Safety and Health Division of the Labor Commission.~~

~~R614-1-2. Scope.~~

~~These rules consist of the administrative procedures of the Utah Occupational Safety and Health Division, incorporating by reference applicable federal standards from 29 CFR 1904, 1908, 1910 and 1926, and the Utah initiated occupational safety and health standards found in Utah Administrative Code R614-1 through R614-7.~~

~~R614-1-3. Definitions.~~

~~A. "Access" means the right and opportunity to examine and copy.~~

~~B. "Act" means the Utah Occupational Safety and Health Act of 1973.~~

~~C. "Administrator" means the director of the Division.~~

~~D. "Amendment" means such modification or change in a code, standard, rule, or order intended for universal or general application.~~

~~E. "Analysis using exposure or medical records" means any compilation of data, or any research, statistical or other study based at least in part on information collected from individual employee exposure or medical records or information collected from health insurance claims records, provided that either the analysis has been reported to the employer or no further work is currently being done by the person responsible for preparing the analysis.~~

~~F. "Commission" means the Utah Labor Commission.~~

G. "Days" means calendar days, including Saturdays, Sundays, and holidays. The day of receipt of any notice shall not be included, and the last day of any time frame shall be included. If the last day of any time period is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday or legal holiday.

H. "Designated representative" means any individual or organization to whom an employee gives written authorization to exercise a right of access. For the purpose of access to employee exposure records and analyses using exposure or medical records, a recognized or certified collective bargaining agent shall be treated automatically as a designated representative without regard to written employee authorization.

I. "Division" means the Utah Occupational Safety and Health Division (UOSH) within the Commission.

J. "Employee" includes any person suffered or permitted to work by an employer.

1. For Medical Records: "Employee" means a current employee, a former employee, or an employee being assigned or transferred to work where there will be exposure to toxic substances or harmful physical agents. In the case of deceased or legally incapacitated employee, the employee's legal representative may directly exercise all the employee's rights under this section.

K. "Employee exposure record" means a record containing any of the following kinds of information concerning employee exposure to toxic substances or harmful physical agents:

1. Environmental (workplace) monitoring or measuring, including personal, area, grab, wipe, or other form of sampling, as well as related collection and analytical methodologies, calculations, and other background data relevant to interpretations of the results obtained;

2. Biological monitoring results which directly assess the absorption of a substance or agent by body systems (e.g., the level of a chemical in the blood, urine, breath, hair, fingernails, etc.) but not including results which assess the biological effect of a substance or agent;

3. Safety data sheets; or

4. In the absence of the above, any other record which reveals the identity (e.g., chemical, common, or trade name) of a toxic substance or harmful physical agent.

L. Employee medical record

1. "Employee medical record" means a record concerning the health status of an employee which is made or maintained by a physician, nurse, or other health care personnel, or technician including:

a. Medical and employment questionnaires or histories (including job description and occupational exposures);

b. The results of medical examinations (pre-employment, pre-assignment, periodic, or episodic) and laboratory tests (including X-ray examinations and all biological monitoring);

c. Medical opinions, diagnoses, progress notes, and recommendations;

d. Descriptions of treatments and prescriptions; and

e. Employee medical complaints.

2. "Employee medical record" does not include the following:

a. Physical specimens (e.g., blood or urine samples) which are routinely discarded as a part of normal medical practice, and not required to be maintained by other legal requirements;

b. Records concerning health insurance claims if maintained separately from the employer's medical program and its records, and not accessible to the employer by employee name or other direct personal identifier (e.g., social security number, payroll number, etc.); or

c. Records concerning voluntary employee assistance programs (alcohol, drug abuse, or personal counseling programs) if maintained separately from the employer's medical program and its records.

M. "Employer" means:

1. The state;

2. Each county, city, town, and school district in the state; and

3. Every person, firm, and private corporation, including public utilities, having one or more workers or operatives regularly employed in the same business, or in or about the same establishment, under any contract of hire.

4. For medical records: "Employer" means a current employer, a former employer, or a successor employer.

N. "Establishment" means a single physical location where business is conducted or where services or industrial operations are performed. (For example: A factory, mill, store, hotel, restaurant, movie theater, farm, ranch, bank, sales office, warehouse, or central administrative office.) Where distinctly separate activities are performed at a single physical location (such as contract construction activities from the same physical location as a lumber yard), each activity shall be treated as a separate physical establishment, and separate notices shall be posted in each establishment to the extent that such notices have been furnished by the Administrator.

O. "Exposure" or "exposed" means that an employee is subjected to a toxic substance or harmful physical agent in the course of employment through any route of entry (inhalation, ingestion, skin contact or absorption, etc.) and includes past exposure and potential (e.g., accidental or possible) exposure, but does not include situations where the employer can demonstrate that the toxic substance or harmful physical agent is not used, handled, stored, generated, or present in the workplace in any manner different from typical non-occupational situations.

P. "Hearing" means a proceeding conducted by the commission.

Q. "Imminent danger" means a danger exists which reasonably could be expected to cause an occupational disease, death, or serious physical harm immediately, or before the danger could be eliminated through enforcement procedures under this chapter.

R. "Inspection" means any inspection of an employer's factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer, and includes any inspection conducted pursuant to a complaint filed under R614-1-6.K.1. and 3., any re-inspection, follow-up inspection, accident investigation or other inspection conducted under Section 34A-6-301 of the Act.

S. "National consensus standard" means any occupational safety and health standard or modification:

1. Adopted by a nationally recognized standards-producing organization under procedures where it can be determined by the administrator and division that persons interested and affected by the standard have reached substantial agreement on its adoption;

2. Formulated in a manner which affords an opportunity for diverse views to be considered; and

3. Designated as such a standard by the Secretary of the United States Department of Labor.

T. "Person" means the general public, one or more individuals, partnerships, associations, corporations, legal representatives, trustees, receivers, and the state and its political subdivisions.

U. "Publish" means publication in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

V. "Record" means any item, collection, or grouping of information regardless of the form or process by which it is maintained (e.g., paper document, microfiche, microfilm, X-ray film, or automated data processing.)

W. "Safety and Health Officer" means a person authorized by the Division to conduct inspections.

X. "Secretary" means the Secretary of the United States Department of Labor.

Y. "Specific written consent" means written authorization containing the following:

1. The name and signature of the employee authorizing the release of medical information;

2. The date of the written authorization;

3. The name of the individual or organization that is authorized to release the medical information;

4. The name of the designated representative (individual or organization) that is authorized to receive the released information;

5. A general description of the medical information that is authorized to be released;

6. A general description of the purpose for the release of medical information; and

7. A date or condition upon which the written authorization will expire (if less than one year).

8. A written authorization does not operate to authorize the release of medical information not in existence on the date of written authorization, unless this is expressly authorized, and does not operate for more than one year from the date of written authorization.

9. A written authorization may be revoked in writing prospectively at any time.

Z. "Standard" means an occupational health and safety standard or group of standards which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary to provide safety and healthful employment and places of employment.

AA. "Toxic substance" or "harmful physical agent" means any chemical substance, biological agent (bacteria, virus, fungus, etc.) or physical stress (noise, heat, cold, vibration, repetitive motion, ionizing and non-ionizing radiation, hypo and hyperbaric pressure, etc) which:

1. Is regulated by any Federal law or rule due to a hazard to health;

2. Is listed in the latest printed edition of the National Institute for Occupational Safety and Health (NIOSH) Registry of Toxic Effects of Chemical Substances (RTECS) (See R614-1-12B);

3. Has yielded positive evidence of an acute or chronic health hazard in human, animal, or other biological testing conducted by, or known to the employer; or

4. Has a material safety data sheet available to the employer indicating that the material may pose a hazard to human health.

BB. "Variance" means a special, limited modification or change in the code or standard applicable to the particular establishment of the employer or person petitioning for the modification or change.

CC. "Workplace" means any place of employment.

R614-1-4. Incorporation of Federal Standards.

A. The following federal occupational safety and health standards are hereby incorporated:

1. 29 CFR 1904, July 1, 2017, is incorporated by reference, except 29 CFR 1904.36 and the workplace fatality, injury and illness reporting requirements found in 29 CFR 1904.1, 1904.2, 1904.7 and 1904.39. Workplace fatalities, injuries and illnesses shall be reported pursuant to the more specific Utah standards in Utah Code Ann. Subsection 34A-6-301(3)(b)(2) and the Utah Administrative Code R614-1-5(C)(1).

2. 29 CFR 1908, July 1, 2015, is incorporated by reference.

3. 29 CFR 1910.6 and 1910.21 through the end part of 1910, July 1, 2017, are incorporated by reference, except 29 CFR 1910.1024.

4. 29 CFR 1926.6 and 1926.20 through the end of part 1926, of the July 1, 2017, edition are incorporated by reference, except 29 CFR 1926.1124.

R614-1-5. Adoption and Extension of Established Federal Safety Standards and State of Utah General Safety Orders.

A. Scope and Purpose.

1. The provisions of this rule adopt and extend the applicability of: (1) established Federal Safety Standards, (2) R614, and (3) Workers' Compensation Coverage, as in effect July 1, 1973 and subsequent revisions, with respect to every employer, employee and employment within the boundaries of the State of Utah, covered by the Utah Occupational Safety and Health Act of 1973.

2. All standards and rules including emergency and/or temporary, promulgated under the Federal Occupational Safety and Health Act of 1970 shall be accepted as part of the Standards, Rules and Regulations under the Utah Occupational Safety and Health Act of 1973, unless specifically revoked or deleted.

3. All employers will provide workers' compensation benefits as required in Section 34A-2-201.

4. Any person, firm, company, corporation or association employing minors must comply fully with all orders and standards of the Labor Division of the Commission. UOSH standards shall prevail in cases of conflict.

B. Construction Work.

Federal Standards, 29 CFR 1926 and selected applicable sections of R614 are accepted covering every employer and place of employment of every employee engaged in construction work of:

1. New construction and building;

2. Remodeling, alteration and repair;

3. Decorating and painting;

4. Demolition; and

5. Transmission and distribution lines and equipment erection, alteration, conversion or improvement.

C. Reporting Requirements.

1. Each employer shall within 8 hours of occurrence, notify the Division of Utah Occupational Safety and Health of the Commission of any work-related fatalities, of any disabling, serious, or significant injury and of any occupational disease incident. Call (801) 530-6901.

2. Tools, equipment, materials or other evidence that might pertain to the cause of such accident shall not be removed or destroyed until so authorized by the Labor commission or one of its Compliance Officers.

3. Each employer shall investigate or cause to be investigated all work-related injuries and occupational diseases and any sudden or unusual occurrence or change of conditions that pose an unsafe or unhealthful exposure to employees.

4. Each employer shall file a report with the Commission within seven days after the occurrence of an injury or occupational disease, after the employers' first knowledge of the occurrence, or after the employee's notification of the same, on forms prescribed by the Commission, of any work-related fatality or any work-related injury or occupational disease resulting in medical treatment, loss of consciousness or loss of work, restriction of work, or transfer to another job. Each employer shall file a subsequent report with the Commission of any previously reported injury or occupational disease that later resulted in death. The subsequent report shall be filed with the Commission within seven days following the death or the employer's first knowledge or notification of the death. No report is required for minor injuries, such as cuts or scratches that require first-aid treatment only, unless the treating physician files, or is required to file the physician's initial report of work injury or occupational disease with the Commission. Also, no report is required for occupational disease which manifest after the employee is no longer employed by the employer with which the exposure occurred, or where the employer is not aware of an exposure occasioned by the employment which results in an occupational disease as defined by Section 34A-3-103.

5. Each employer shall provide the employee with a copy of the report submitted to the Commission. The employer shall also provide the employee with a statement, as prepared by the Commission, of his rights and responsibilities related to the industrial injury or occupational disease.

6. Each employer shall maintain a record in a manner prescribed by the Commission of all work-related injuries and all occupational disease resulting in medical treatment, loss of consciousness, loss of work, restriction or work, or transfer to another job.

7. No person shall remove, displace, destroy, or carry away any safety devices or safeguards provided for use in any place of employment, or interfere in any way with the use thereof by other persons, or interfere in any method or process adopted for the protection of employees. No employee shall refuse or neglect to follow and obey reasonable orders that are issued for the protection of health, life, safety, and welfare of employees.

D. Employer, Employee Responsibility.

1. It shall be the duty and responsibility of any employee upon entering his or her place of employment, to examine carefully such working place and ascertain if the place is safe, if the tools and equipment can be used with safety, and if the work can be performed safely. After such examination, it shall be the duty of the employee to make the place, tools, or equipment safe. If this cannot be done, then it becomes his or her duty to immediately report the unsafe place, tools, equipment, or conditions to the foreman or supervisor.

2. Employees must comply with all safety rules of their employer and with all the Rules and Regulations promulgated by UOSH which are applicable to their type of employment.

3. Management shall inspect or designate a competent person or persons to inspect frequently for unsafe conditions and practices, defective equipment and materials, and where such conditions are found to take appropriate action to correct such conditions immediately.

4. Supervisory personnel shall enforce safety regulations and issue such rules as may be necessary to safeguard the health and lives of employees. They shall warn all employees of any dangerous condition and permit no one to work in an unsafe place, except for the purpose of making it safe.

E. General Safety Requirements.

1. Where there is a risk of injury from hair entanglement in moving parts of machinery, employees shall confine their hair to eliminate the hazard.

2. Body protection: Clothing which is appropriate for the work being done should be worn. Loose sleeves, tails, ties, lapels, cuffs, or similar garments which can become entangled in moving machinery shall not be worn where an entanglement hazard exists. Clothing saturated or impregnated with flammable liquids, corrosive substances, irritant, oxidizing agents or other toxic materials shall be removed and shall not be worn until properly cleaned.

3. General. Wrist watches, rings, or other jewelry shall not be worn on the job where they constitute a safety hazard.

4. Safety Committees. It is recommended that a safety committee comprised of management and employee representatives be established. The committee or the individual member of the committee shall not assume the responsibility of management to maintain and conduct a safe operation. The duties of the committee should be outlined by management, and may include such items as reviewing the use of safety apparel, recommending action to correct unsafe conditions, etc.

5. No intoxicated person shall be allowed to go into or loiter around any operation where workers are employed.

6. No employee shall carry intoxicating liquor into a place of employment, except that the place of employment shall be engaged in liquor business and this is a part of his assigned duties.

7. Employees who do not understand or speak the English language shall not be assigned to any duty or place where the lack or partial lack of understanding or speaking English might adversely affect their safety or that of other employees.

8. Good housekeeping is the first law of accident prevention and shall be a primary concern of all supervisors and workers. An excessively littered or dirty work area will not be tolerated as it constitutes an unsafe, hazardous condition of employment.

9. Emergency Posting Required.

a. Good communications are necessary if a fire or disaster situation is to be adequately coped with. A system for alerting and directing employees to safety is an essential step in a safety program.

b. A list of telephone numbers or addresses as may be applicable shall be posted in a conspicuous place so the necessary help can be obtained in case of emergency. This list shall include:

(1) Responsible supervision (superintendent or equivalent)

(2) Doctor

(3) Hospital

(4) Ambulance

(5) Fire Department

(6) Sheriff or Police

10. Lockouts and Tagging.

a. Where there is any possibility of machinery being started or electrical circuits being energized while repairs or maintenance work is being done, the electrical circuits shall be locked open and/or tagged and the employee in charge (the one who places the lock) shall keep the key until the job is completed or he is relieved from the job, such as by shift change or other assignment. If it is expected that the job may be assigned to other workers, he may remove his lock provided the supervisor or other workers apply their lock and tag immediately. Where there is danger of machinery being started or of steam or air creating a hazard to workers while repairs on maintenance work is being done, the employee in charge shall disconnect the lines or lock and tag the main valve closed or blank the line on all steam driven machinery, pressurized lines or lines connected to such equipment if they could create a hazard to workers.

b. After tagging and lockout procedures have been applied, machinery, lines, and equipment shall be checked to insure that they cannot be operated.

c. If locks and tags cannot be applied, conspicuous tags made of nonconducting material and plainly lettered, "EMPLOYEES WORKING" followed by the other appropriate wording, such as "Do not close this switch" shall be used.

d. When in doubt as to procedure, the worker shall consult his supervisor concerning safe procedure.

11. Safety-Type hooks shall be used wherever possible.

12. Emergency Showers, Bubblers, and Eye Washers.

a. Readily accessible, well marked, rapid action safety showers and eye wash facilities must be available in areas where strong acid, caustic or highly oxidizing or irritating chemicals are being handled. (This is not applicable where first aid practices specifically preclude flushing with running water.)

b. Showers should have deluge type heads, easily accessible, plainly marked and controlled by quick opening valves of the type that stay open. The valve handle should be equipped with a pull chain, rope, etc., so the blinded employee will be able to more easily locate the valve control. In addition, it is recommended that the floor platform be so constructed to actuate the quick opening valve. The shower should be capable of supplying large quantities of water under moderately high pressure. Blankets should be located so as to be reasonably accessible to the shower area.

c. All safety equipment should be inspected and tested at regular intervals, preferably daily and especially during freezing weather, to make sure it is in good working condition at all times.

13. Grizzlies Over Chutes, Bins and Tank Openings.

a. Employees shall be furnished with and be required to use approved type safety harnesses and shall be tied off securely so as to suspend him above the level of the product before entering any bin, chute or storage place containing material that might cave or run. Cleaning and barring down in such places shall be started from the top using only bars blunt on one end or having a ring type or D handhold.

b. Employees shall not work on top of material stored or piled above chutes, drawholes or conveyor systems while material is being withdrawn unless protected.

c. Chutes, bins, drawholes and similar openings shall be equipped with grizzlies or other safety devices that will prevent employees from falling into the openings.

d. Bars for grizzly grids shall be so fitted that they will not loosen and slip out of place, and the operator shall not remove a bar temporarily to let large rocks through rather than to break them.

F. All requirements of PSM Standard 29 CFR 1910.119 are hereby extended to include the blister agents, HT, HD, H, Lewisite, and the nerve agents, GA, VX.

R614-1-6. Personal Protective Equipment.

A. When no other method or combination of methods can be provided to prevent employees from becoming exposed to toxic dusts, fumes, gases, flying particles or other objects, dangerous rays or burns from heat, acid, caustic, or any other hazard of a similar nature, the employer must provide each worker with the necessary personal protection equipment, such as respirators, goggles, gas masks, certain types of protective clothing, etc. Provision must also be made to keep all such equipment in good, sanitary working condition at all times.

B. Where there is a risk of injury from hair entanglement in moving parts of machinery, employees shall confine their hair to eliminate the hazard.

C. Except when, in the opinion of the Administrator, their use creates a greater hazard, life lines and safety harnesses shall be provided for and used by workers engaged in window washing, in securing or shifting thrustouts, inspecting or working on overhead machines supporting scaffolds or other high rigging, and on steeply pitched roofs. Similarly, they shall be provided for and used by all exposed to the hazard of falling, and by workmen on poles workers or steel frame construction more than ten (10) feet above solid ground or above a temporary or permanent floor or platform.

D. Every life line and safety harness shall be inspected by the superintendent or his authorized representative and the worker before it is used and at least once a week while continued in use.

E. Wristwatches, rings, or other jewelry shall not be worn on the job where they constitute a safety hazard.

R614-1-7. Inspections, Citations, and Proposed Penalties.

A. The Utah Occupational Safety and Health Act (Title 34A, Chapter 6) requires, that every employer covered under the Act furnish to his employees employment and a place of employment which are free from recognized hazards that are likely to cause death or serious physical harm to his employees. The Act also requires that employers comply with occupational safety and health standards promulgated under the Act, and that employees comply with standards, rules, regulations and orders issued under the Act applicable to employees actions and conduct. The Act authorizes the Utah Occupational Safety and Health Division to conduct inspections, and to issue citations and proposed penalties for alleged violations. The Act, under Section 34A-6-301, also authorizes the Administrator to conduct inspections and to question employers and employees in connection with research and other related activities. The Act contains provisions for adjudication of violations, periods prescribed for the abatement of violations, and proposed penalties by the Labor Commission, if contested by an employer or by an employee or authorized representative of employees, and for a judicial review. The purpose of R614-1-7 is to prescribe rules and general policies for enforcement of the inspection, citations, and proposed penalty provisions of the Act. Where R614-1-7 sets forth general enforcement policies rather than substantive or procedural rules, such policies may be modified in specific circumstances where the Administrator or his designee determines that an alternative course of action would better serve the objectives of the Act.

B. Posting of notices; availability of Act, regulations and applicable standards.

1. Each employer shall post and keep posted notices, to be furnished by the Administrator, informing employees of the protections and obligations provided for in the Act, and that for assistance and information, including copies of the Act and of specific safety and health standards, employees should contact their employer or the office of the Administrator. Such notices shall be posted by the employer in each establishment in a conspicuous place where notices to employees are customarily posted. Each employer shall take steps to insure that such notices are not altered, defaced, or covered by other material.

2. Where employers are engaged in activities which are physically dispersed, such as agriculture, construction, transportation communications, and electric, gas and sanitary services, the notices required shall be posted at the location where employees report each day. In the case of employees who do not usually work at, or report to, a single establishment, such as traveling salesman, technicians, engineers, etc., such notices shall be posted in accordance with the requirements of R614-1-7.Q.

3. Copies of the Act, all regulations published under authority of Section 34A-6-202 and all applicable standards will be available at the office of the Administrator. If an employer has obtained copies of these materials, he shall make them available upon request to any employee or his authorized representative.

4. Any employer failing to comply with the provisions of this Part shall be subject to citation and penalty in accordance with the provisions of Sections 34A-6-302 and 34A-6-307 of the Act.

C. Authority for Inspection.

1. Safety and Health Officers of the Division are authorized to enter without delay and at reasonable times any factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer; to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment, and all pertinent conditions, structures, machines, apparatus, devices, equipment and materials therein; to question privately any employer, owner, operator, agent or employee; and to review records required by the Act and regulations published in R614-1-7 and 8, and other records which are directly related to the purpose of the inspection.

2. Prior to inspecting areas containing information which has been classified as restricted by an agency of the United States Government in the interest of national security, Safety and Health Officers shall obtain the appropriate security clearance.

D. Objection to Inspection.

1. Upon a refusal to permit the Safety and Health Officer, in exercise of his official duties, to enter without delay and at reasonable times any place of employment or any place therein, to inspect, to review records, or to question any employer, owner, operator, agent, or employee, in accordance with R614-1-7.B. and C. or to permit a representative of employees to accompany the Safety and Health Officer during the physical inspection of any workplace in accordance with R614-1-7.G. the Safety and Health Officer shall terminate the inspection or confine the inspection to other areas, conditions, structures, machines, apparatus, devices, equipment, materials, records or interview concerning which no objection is raised.

2. The Safety and Health Officer shall endeavor to ascertain the reason for such refusal, and shall immediately report the refusal and the reason therefor to the Administrator. The Administrator shall take appropriate action, including compulsory process, if necessary.

3. Compulsory process shall be sought in advance of an attempted inspection or investigation if, in the judgment of the Administrator circumstances exist which make such preinspection process desirable or necessary. Some examples of circumstances in which it may be desirable or necessary to seek compulsory process in advance of an attempt to inspect or investigate include (but are not limited to):

a. When the employers past practice either implicitly or explicitly puts the Administrator on notice that a warrantless inspection will not be allowed;

b. When an inspection is scheduled far from the local office and procuring a warrant prior to leaving to conduct the inspection would avoid, in case of refusal of entry, the expenditure of significant time and resources to return to the office, obtain a warrant and return to the work-site;

c. When an inspection includes the use of special equipment or when the presence of an expert or experts is needed in order to properly conduct the inspection, and procuring a warrant prior to an attempt to inspect would alleviate the difficulties or costs encountered in coordinating the availability of such equipment or expert.

4. For purposes of this section, the term compulsory process shall mean the institution of any appropriate action, including ex parte application for an inspection warrant or its equivalent. Ex parte inspection warrants shall be the preferred form of compulsory process in all circumstances where compulsory process is relied upon to seek entry to a workplace under this section.

E. Entry not a Waiver.

Any permission to enter, inspect, review records, or question any person, shall not imply a waiver of any cause of action, citation, or penalty under the Act. Safety and Health Officers are not authorized to grant such waivers.

F. Advance notice of Inspections.

1. Advance notice of inspections may not be given, except in the following instances:

a. In cases of apparent imminent danger, to enable the employer to abate the danger as quickly as possible.

b. In circumstances where the inspection can most effectively be conducted after regular business hours or where special preparations are necessary for an inspection.

c. Where necessary to assure the presence of the employer or representative of the employer and employees or the appropriate personnel needed to aid the inspection; and

d. In other circumstances where the Administrator determines that the giving of advance notice would enhance the probability of an effective and thorough inspection.

2. In the instances described in R614-1-7.F.1., advance notice of inspections may be given only if authorized by the Administrator, except that in cases of imminent danger, advance notice may be given by the Safety and Health Officer without such authorization if the Administrator is not immediately available. Where advance notice is given, it shall be the employer's responsibility to notify the authorized representative of the employees of the inspection, if the identity of such representatives is known to the employer. (See R614-1-7.H.2. as to instances where there is no authorized representative of employees.) Upon the request of the employer, the Safety and Health Officer will inform the authorized representative of employees of the inspection, provided that the employer furnishes the Safety and Health Officer with the identity of such representatives and

with such other information as is necessary to enable him promptly to inform such representatives of the inspection. A person who fails to comply with his responsibilities under this paragraph, may be subject to citation and penalty under Sections 34A-6-302 and 34A-6-307 of the Act. Advance notice in any of the instances described in R614-1-7.F. shall not be given more than 24 hours before the inspection is scheduled to be conducted, except in cases of imminent danger and other unusual circumstances.

3. The Act provides in Subsection 34A-6-307(5)(b) conditions for which advanced notice can be given and the penalties for not complying.

G. Conduct of Inspections.

1. Subject to the provisions of R614-1-7.C., inspections shall take place at such times and in such places of employment as the Administrator or the Safety and Health Officer may direct. At the beginning of an inspection, Safety and Health Officers shall present their credentials to the owner, operator, or agent in charge at the establishment; explain the nature and purpose of the inspection; and indicate generally the scope of the inspection and the records specified in R614-1-7.C. which they wish to review. However, such designations of records shall not preclude access to additional records specified in R614-1-7.C.

2. Safety and Health Officers shall have authority to take environmental samples and to take photographs or video recordings related to the purpose of the inspection, employ other reasonable investigative techniques, and question privately any employer, owner, operator, agent or employee of an establishment. (See R614-1-7.I. on trade secrets.) As used herein, the term "employ other reasonable investigative techniques" includes, but is not limited to, the use of devices to measure employee exposures and the attachment of personal sampling equipment such as dosimeters, pumps, badges, and other similar devices to employees in order to monitor their exposures.

3. In taking photographs and samples, Safety and Health Officers shall take reasonable precautions to insure that such actions with flash, spark-producing, or other equipment would not be hazardous. Safety and Health Officers shall comply with all employer safety and health rules and practices at the establishment being inspected, and shall wear and use appropriate protective clothing and equipment.

4. The conduct of inspections shall preclude unreasonable disruption of the operations of the employer's establishment.

5. At the conclusion of an inspection, the Safety and Health Officer shall confer with the employer or his representative and informally advise him of any apparent safety or health violations disclosed by the inspection. During such conference, the employer shall be afforded an opportunity to bring to the attention of the Safety and Health Officer any pertinent information regarding conditions in the workplace.

H. Representative of employers and employees.

1. Safety and Health Officer shall be in charge of inspections and questioning of persons. A representative of the employer and a representative authorized by his employees shall be given an opportunity to accompany the Safety and Health Officer during the physical inspection of any workplace for the purpose of aiding such inspection. A Safety and Health Officer may permit additional employer representative and additional representatives authorized by employees to accompany him where he determines that such additional representatives will further aid the inspection. A different employer and employee representative may accompany the Safety and Health Officer during each phase of an inspection if this will not interfere with the conduct of the inspection.

2. Safety and Health Officers shall have authority to resolve all disputes as to who is the representative authorized by the employer and the employees for purpose of this Part. If there is no authorized representative of employees, or if the Safety and Health Officer is unable to determine with reasonable certainty who is such representative, he shall consult with a reasonable number of employees concerning matters of safety and health in the workplace.

3. The representative(s) authorized by employees shall be an employee(s) of the employer. However, if in the judgment of the Safety and Health Officer, good cause has been shown why accompaniment by a third party who is not an employee of the employer (such as an industrial hygienist or safety engineer) is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace, such third party may accompany the Safety and Health Officer during the inspection.

4. Safety and Health Officers are authorized to deny the right of accompaniment under this Part to any person whose conduct interferes with a fair and orderly inspection. The right of accompaniment in areas containing trade secrets shall be subject to the provisions of R614-1-7.I.3. With regard to information classified by an agency of the U.S. Government in the interest of national security, only persons authorized to have access to such information may accompany a Safety and Health Officer in areas containing such information.

I. Trade secrets.

1. Section 34A-6-306 of the Act provides provisions for trade secrets.

2. At the commencement of an inspection, the employer may identify areas in the establishment which contain or which might reveal a trade secret. If the Safety and Health Officer has no clear reason to question such identification, information obtained in such areas, including all negatives and prints of photographs, and environmental samples, shall be labeled "confidential-trade secret" and shall not be disclosed except in accordance with the provisions of Section 34A-6-306 of the Act.

3. Upon the request of an employer, any authorized representative of employees under R614-1-7.H. in an area containing trade secrets shall be an employee in that area or an employee authorized by the employer to enter that area. Where there is not such representative or employee, the Safety and Health Officer shall consult with a reasonable number of employees who work in that area concerning matters of safety and health.

J. Consultation with employees.

Safety and Health Officers may consult with employees concerning matters of occupational safety and health to the extent they deem necessary for the conduct of an effective and thorough inspection. During the course of an inspection, any employee shall be afforded an opportunity to bring any violation of the Act which he has reason to believe exists in the workplace to the attention of the Safety and Health Officer.

K. Complaints by employees.

1. Any employee or representative of employees who believe that a violation of the Act exists in any workplace where such employee is employed may request an inspection of such workplace by giving notice of the alleged violation to the Administrator or to a Safety and Health Officer. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice,

and shall be signed by the employee or representative of employees. A copy of the notice shall be provided the employer or his agent by the Administrator or Safety and Health Officer no later than at the time of inspection, except that, upon the request of the person giving such notice, his name and the names of individual employees referred to therein shall not appear in such copy or on any record published, released, or made available by the Administrator.

2. If upon receipt of such notification the Administrator determines that the complaint meets the requirements set forth in R614-1-7.K.1., and that there are reasonable grounds to believe that the alleged violation exists, he shall cause an inspection to be made as soon as practicable. Inspections under this Part shall not be limited to matters referred to in the complaint.

3. Prior to or during any inspection of a workplace, any employee or representative of employees employed in such workplace may notify the Safety and Health Officer, in writing, of any violation of the Act which they have reason to believe exists in such workplace. Any such notice shall comply with requirements of R614-1-7.K.1.

4. Section 34A-6-203 of the Act provides protection for employees while engaged in protected activities.

L. Inspection not warranted; informal review.

1. If the Administrator determines that an inspection is not warranted because there are no reasonable grounds to believe that a violation or danger exists with respect to a complaint under K, he shall notify the complaining party in writing of such determination. The complaining party may obtain review of such determination by submitting a written statement of position with the Administrator. The Administrator, at his discretion, may hold an informal conference in which the complaining party and the employer may orally present their views. After considering all written and oral view presented, the Administrator shall affirm, modify, or reverse the determination of the previous decision and again furnish the complaining party and the employer written notification of his decision and the reasons therefor.

2. If the Administrator determines that an inspection is not warranted because the requirements of R614-1-7.K.1. have not been met, he shall notify the complaining party in writing of such determination. Such determination shall be without prejudice to the filing of a new complaint meeting the requirements of R614-1-7.K.1.

M. Imminent danger.

Whenever a Safety and Health Officer concludes, on the basis of an inspection, that conditions or practices exist in any place of employment which could reasonably be expected to cause death or serious physical harm before the imminence of such danger can be eliminated through the enforcement procedures of the Act, he shall inform the affected employees and employers of the danger, that he is recommending a civil action to restrain such conditions or practices and for other appropriate citations of proposed penalties which may be issued with respect to an imminent danger even though, after being informed of such danger by the Compliance Officer, the employer immediately eliminates the imminence of the danger and initiates steps to abate such danger.

N. Citations.

1. The Administrator shall review the inspection report of the Safety and Health Officer. If, on the basis of the report the Administrator believes that the employer has violated a requirement of Section 34A-6-201 of the Act, of any standard, rule, or order promulgated pursuant to Section 34A-6-202 of the Act, or of any substantive rule published in this chapter, shall issue to the employer a citation. A citation shall be issued even though, after being informed of an alleged violation by the Safety and Health Officer, the employer immediately abates, or initiates steps to abate, such alleged violations. Any citation shall be issued with reasonable promptness after termination of the inspection. No citation may be issued after the expiration of 6 months following the occurrence of any violation.

2. Any citation shall describe with particularity the nature of the alleged violation, including a reference to the provision of the Act, standard, rule, regulations, or order alleged to have been violated. Any citation shall also fix a reasonable time or times for the abatement of the alleged violations.

3. If a citation is issued for an alleged violation in a request for inspection under R614-1-7.K.1. or a notification of violation under R614-1-7.K.3., a copy of the citation shall also be sent to the employee or representative of employees who made such request or notification.

4. Following an inspection, if the Administrator determines that a citation is not warranted with respect to a danger or violation alleged to exist in a request for inspection under R614-1-7.K.1.or a notification of violation under R614-1-7.K.3., the informal review procedures prescribed in R614-1-7.L.1. shall be applicable. After considering all views presented, the Administrator shall either affirm, order a re-inspection, or issue a citation if he believes that the inspection disclosed a violation. The Administrator shall furnish the complaining party and the employer with written notification of his determination and the reasons therefor.

5. Every citation shall state that the issuance of a citation does not constitute a finding that a violation of the Act has occurred unless there is a failure to contest as provided for in the Act or, if contested, unless the citation is affirmed by the Commission.

O. Petitions for modification of abatement date.

1. An employer may file a petition for modification of abatement date when he has made a good faith effort to comply with the abatement requirements of the citation, but such abatement has not been completed because of factors beyond his reasonable control.

2. A petition for modification of abatement date shall be in writing and shall include the following information.

a. All steps taken by the employer, and the dates of such action, in an effort to achieve compliance during the prescribed abatement period.

b. The specific additional abatement time necessary in order to achieve compliance.

c. The reasons such additional time is necessary, including the unavailability, of professional or technical personnel or of materials and equipment, or because necessary construction or alteration of facilities cannot be completed by the original abatement date.

d. All available interim steps being taken to safeguard the employees against the cited hazard during the abatement period.

e. A certification that a copy of the petition has been posted and, if appropriate, served on the authorized representative of affected employees, in accordance with paragraph R614-1-7.O.3.a. and a certification of the date upon which such posting and service was made.

3. A petition for modification of abatement date shall be filed with the Administrator who issued the citation no later than the close of the next working day following the date on which abatement was originally required. A later-filed petition shall be accompanied by the employer's statement of exceptional circumstances explaining the delay.

a. A copy of such petition shall be posted in a conspicuous place where all affected employees will have notice thereof or near

such location where the violation occurred. The petition shall remain posted for a period of ten (10) days. Where affected employees are represented by an authorized representative, said representative shall be served with a copy of such petition.

b. Affected employees or their representatives may file an objection in writing to such petition with the aforesaid Administrator. Failure to file such objection within ten (10) working days of the date of posting of such petition or of service upon an authorized representative shall constitute a waiver of any further right to object to said petition.

c. The Administrator or his duly authorized agent shall have authority to approve any petition for modification of abatement date filed pursuant to paragraphs R614-1-7.O.2. and 3. Such uncontested petitions shall become final orders pursuant to Subsection 34A-6-303(1) of the Act.

d. The Administrator or his authorized representative shall not exercise his approval power until the expiration of ten (10) days from the date of the petition was posted or served pursuant to paragraphs R614-1-7.O.3.a. and b. by the employer.

4. Where any petition is objected to by the affected employees, the petition, citation, and any objections shall be forwarded to the Administrator per R614-1-7.O.3.b. Upon receipt the Administrator shall schedule and notify all interested parties of a formal hearing before the Administrator or his authorized representative(s). Minutes of this hearing shall be taken and become public records of the Commission. Within ten (10) days after conclusion of the hearing, a written opinion by the Administrator will be made, with copies to the affected employees or their representatives, the affected employer and to the Commission.

P. Proposed penalties.

1. After, or concurrent with, the issuance of a citation and within a reasonable time after the termination of the inspection, the Administrator shall notify the employer by certified mail or by personal service by the Safety and Health Officer of the proposed penalty under Section 34A-6-307 of the Act, or that no penalty is being proposed. Any notice of proposed penalty shall state that the proposed penalty shall be deemed to be the final order of the Commission and not subject to review by any court or agency unless, within 30 days from the date of receipt of such notice, the employer notifies the Adjudication Division in writing that he intends to contest the citation or the notification of proposed penalty before the Commission.

2. The Administrator shall determine the amount of any proposed penalty, giving due consideration to the appropriateness of the penalty with respect to the size of the business, of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations, in accordance with the provisions of Section 34A-6-307 of the Act.

3. Appropriate penalties may be proposed with respect to an alleged violation even though after being informed of such alleged violation by the Safety and Health Officer, the employer immediately abates, or initiates steps to abate, such alleged violation. Penalties shall not be proposed for violations which have no direct or immediate relationship to safety or health.

Q. Posting of citations.

1. Upon receipt of any citation under the Act, the employer shall immediately post such citation, or copy thereof, unedited, at or near each place of alleged violation referred to in the citation occurred, except as hereinafter provided. Where, because of the nature of the employer's operations, it is not practicable to post the citation at or near each place of alleged violation, such citation shall be posted, unedited, in a prominent place where it will be readily observable by all affected employees. For example, where employees are engaged in activities which are physically dispersed (see R614-1-7.B.), the citation may be posted at the location to which employees report each day. Where employees do not primarily work at or report to a single location (see R614-1-7.B.2.), the citation must be posted at the location from which the employees commence their activities. The employer shall take steps to ensure that the citation is not altered, defaced, or covered by other material.

2. Each citation or a copy thereof, shall remain posted until the violation has been abated, or for 3 working days which ever is later. The filing by the employer of a notice of intention to contest under R614-1-7.R. shall not affect his posting responsibility unless and until the Commission issues a final order vacating the citation.

3. An employer, to whom a citation has been issued, may post a notice in the same location where such citation is posted indicating that the citation is being contested before the Commission, such notice may explain the reasons for such contest. The employer may also indicate that specified steps have been taken to abate the violation.

4. Any employer failing to comply with the provisions of R614-1-7.Q.1. and 2. shall be subject to citation and penalty in accordance with the provisions of Section 34A-6-307 of the Act.

R. Employer and employee hearings before the Commission.

1. Any employer to whom a citation or notice of proposed penalty has been issued, may under Section 34A-6-303 of the Act, notify the Adjudication Division in writing that the employer intends to contest such citation or proposed penalty before the Commission. Such notice of intention to contest must be received by the Adjudication Division within 30 days of the receipt by the employer of the notice of proposed penalty. Every notice of intention to contest shall specify whether it is directed to the citation or to the proposed penalty, or both. The Adjudication Division shall handle such notice in accordance with the rules of procedures prescribed by the Commission.

2. An employee or representative of employee of an employer to whom a citation has been issued may, under Section 34A-6-303(3) of the Act, file a written notice with the Adjudication Division alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable. Such notice must be received by the Adjudication Division within 30 days of the receipt by the employer of the notice of proposed penalty or notice that no penalty is being proposed. The Adjudication Division shall handle such notice in accordance with the rules of procedure prescribed by the Commission.

S. Failure to correct a violation for which a citation has been issued.

1. If an inspection discloses that an employer has failed to correct an alleged violation for which a citation has been issued within the period permitted for its correction, the Administrator shall notify the employer by certified mail or by personal service by the Safety and Health Officer of such failure and of the additional penalty proposed under Section 34A-6-307 of the Act by reason of such failure. The period for the correction of a violation for which a citation has been issued shall not begin to run until the entry of a final order of the

Commission in the case of any review proceedings initiated by the employer in good faith and not solely for delay or avoidance of penalties.

2. Any employer receiving a notification of failure to correct a violation and of proposed additional penalty may, under Section 34A-6-303(3) of the Act, notify the Adjudication Division in writing that he intends to contest such notification or proposed additional penalty before the Commission. Such notice of intention to contest shall be postmarked within 30 days of receipt by the employer of the notification of failure to correct a violation and of proposed additional penalty. The Adjudication Division shall handle such notice in accordance with the rules of procedures prescribed by the Commission.

3. Each notification of failure to correct a violation and of proposed additional penalty shall state that it shall be deemed to be the final order of the Commission and not subject to review by any court or agency unless, within 30 days from the date of receipt of such notification, the employer notifies the Adjudication Division in writing that he intends to contest the notification or the proposed additional penalty before the Commission.

T. Informal conferences.

At the request of an affected employer, employee, or representative of employees, the Administrator may hold an informal conference for the purpose of discussing any issues raised by an inspection, citation, notice of proposed penalty, or notice of intention to contest. The Administrator shall provide in writing the reasons for any settlement of issues at such conferences. If the conference is requested by the employer, an affected employee or his representative shall be afforded an opportunity to participate, at the discretion of the Administrator. If the conference is requested by an employee or representative of employees, the employer shall be afforded an opportunity to participate, at the discretion of the Administrator. Any party may be represented by counsel at such conference. No such conference or request for such conference shall operate as a stay of any 30 day period for filing a notice of intention to contest as prescribed in R614-1-7.R.

U. Multi-Employer worksites.

1. Pursuant to Section 34A-6-201 of the Act, violation of an applicable standard adopted under Section 34A-6-202 of the Act at a multi-employer worksite may result in a citation issued to more than one employer.

2. An employer on a multi-employer worksite may be considered a creating, exposing, correcting, or controlling employer. An employer may be cited should:

a. It meet the definition of a creating employer and be found to have failed to exercise the duty of care required by this Rule for a creating employer: or

b. It meet the definition of an exposing, correcting, or controlling employer and be found to have failed to exercise the duty of care required by this Rule for that category of employer.

c. Even if an employer meets its duty of reasonable care applicable to one category of employer, it may still be cited should it meet the definition of another category of employer and be found to have failed to exercise the duty of care required by this Rule for that category of employer. No employer will be cited for the same violation under multiple categories of employers.

3. Creating Employer. A creating employer is one that created a hazardous condition on the worksite. A creating employer may be cited if:

a. Its own employees are exposed or if the employees of another employer at the site are exposed to this hazard; and

b. The employer did not exercise reasonable care by taking prompt and effective steps to alert employees of other employers of the hazard and to correct or remove the hazard or, if the creating employer does not have the ability or authority to correct or remove the hazard, to notify the controlling or correcting employer of the hazard.

4. Exposing Employer. An exposing employer is one that exposed its own employees to a hazard. If the exposing employer created the hazard, it is citable as the creating employer, not the exposing employer.

a. If the exposing employer did not create the hazard, it may be cited as the exposing employer if:

i. It knew of the hazard or failed to exercise reasonable care to discover the hazard; and

ii. Upon obtaining knowledge of the hazard, it failed to take prompt and reasonable precautions, consistent with its authority on the worksite, to protect its employees.

b. An exposing employer will be deemed to have exercised reasonable care to discover a hazard if it demonstrates that it has regularly and diligently inspected the worksite.

c. If the exposing employer has the authority to correct or remove the hazard, it must correct or remove the hazard with reasonable diligence. If the exposing employer lacks such authority, it may still be cited if:

i. It failed to make a good faith effort to ask the creating and/or controlling employer to correct the hazard;

ii. It failed to inform its employees of the hazard; and

iii. It failed to take reasonable alternative measures, consistent with its authority on the worksite, to protect its employees.

5. Correcting Employer. A correcting employer is one responsible for correcting a hazardous condition, such as installing or maintaining safety and health devices or equipment, or implementing appropriate health and safety procedures. A correcting employer must exercise reasonable care in preventing and discovering hazards and ensure such hazards are corrected in a prompt manner, which shall be determined in light of the scale, nature and pace of the work, and the amount of activity of the worksite.

6. Controlling Employer. A controlling employer is one with general supervisory authority over a worksite. This authority may be established either through contract or practice and includes the authority to correct safety and health violations or require others to do so, but it is separate from the responsibilities and care to be exercised by a correcting employer.

a. A controlling employer will not be cited if it has exercised reasonable care to prevent and detect violations on the worksite. The extent of the measures used by a controlling employer to satisfy this duty, however, is less than the extent required of an employer when protecting its own employees. A controlling employer is not required to inspect for hazards or violations as frequently or to demonstrate the same knowledge of applicable standards or specific trade expertise as the employer under its control.

b. When determining the duty of reasonable care applicable to a controlling employer on a multi-employer worksite, the factors that may be considered include, but are not limited to:

i. The nature of the worksite and industry in which the work is being performed;

ii. The scale, nature and pace of the work, including the pace and frequency at which the worksite hazards change as the work progresses;

iii. The amount of activity at the worksite, including the number of employers under its control and the number of employees working on the worksite;

iv. The implementation and monitoring of safety and health precautions for the entire worksite requiring that other employers on the worksite comply with their respective obligations and standards of care for the safety of employees, a graduated system of discipline for non-compliant employees and/or employers, regular worksite safety meetings, and when appropriate for atypical hazards, the providing of adequate safety training by employers for atypical hazards present on the worksite; and

v. The frequency of worksite inspections, particularly at the commencement of a project or the commencement of work on the project by other employers that come under its control. As work progresses, the frequency and sufficiency of such inspections shall be determined in relation to other employers' compliance with their respective obligations and standards of care as required by this Rule.

c. When evaluating whether a controlling employer has demonstrated reasonable care in preventing and discovering violations, the following factors, though not inclusive, shall be considered;

i. Whether the controlling employer conducted worksite inspections with sufficient frequency as contemplated by subsection 6(b);

ii. The controlling employer's implementation and monitoring of an effective system for identifying a hazardous condition and promptly notifying employers under its control of the hazard so as to ensure compliance with their respective duties of care under this Rule;

iii. Whether the controlling employer implements a graduated system of discipline for non-compliant employees and/or employers with their respective safety and health requirements;

iv. Whether the controlling employer performs follow-up inspections to ensure hazards are corrected; and

v. Other actions demonstrating the implementation and monitoring of safety and health precautions for the entire worksite.

7. In accordance with Section 34A-6-110, nothing in this Rule shall:

a. be deemed to limit or repeal requirements imposed by statute or otherwise recognized by law; or

b. be construed or held to supersede or in any manner affect workers' compensation or enlarge or diminish or affect the common-law or statutory rights, duties, or liabilities of employers and employees under any law with respect to injuries, occupational or other diseases, or death of employees arising out of, or in the course of employment.

R614-1-8. Recording and Reporting Occupational Injuries and Illnesses.

A. The rules in this section implement Sections 34A-6-108 and 34A-6-301(3) of the Act. These sections provide for record-keeping and reporting by employers covered under the Act, for developing information regarding the causes and prevention of occupational accidents and illnesses, and for maintaining a program of collection, compilation, and analysis of occupational safety and health statistics. Regardless of size or type of operation, accidents and fatalities must be reported to UOSH in accordance with the requirements of R614-1-5.C.

NOTE: Utah has adopted and will enforce the Federal Recordkeeping Standard 29CFR1904.

Utah Specific Recordkeeping requirements follow:

B. Supplementary record.

Each employer shall have available for inspection at each establishment within 6 working days after receiving information that a recordable case has occurred, a supplementary record for that establishment. The record shall be completed in the detail prescribed in the instructions accompanying federal OSHA Form No. 301, Utah Industrial Accidents Form 122. Workers' compensation, insurance, or other reports are acceptable alternative records if they contain the information required by the federal OSHA Form No. 301, Utah Industrial Accidents Form 122. If no acceptable alternative record is maintained for other purposes, Federal OSHA Form No. 301, Utah Industrial Accidents Form 122 shall be used or the necessary information shall be otherwise maintained.

C. Retention of records.

Preservation of records.

a. This section applies to each employer who makes, maintains or has access to employee exposure records or employee medical records.

b. "Employee exposure record" means a record of monitoring or measuring which contains qualitative or quantitative information indicative of employee exposures to toxic materials or harmful physical agents. This includes both individual exposure records and general research or statistical studies based on information collected from exposure records.

c. "Employee medical record" means a record which contains information concerning the health status of an employee or employees exposed or potentially exposed to toxic materials or harmful physical agents. These records may include, but are not limited to:

(1) The results of medical examinations and tests;

(2) Any opinions or recommendations of a physician or other health professional concerning the health of an employee or employees; and

(3) Any employee medical complaints relating to workplace exposure. Employee medical records include both individual medical records and general research or statistical studies based on information collected from medical records.

d. Preservation of records. Each employer who makes, maintains, or has access to employee exposure records or employee medical records shall preserve these records.

e. Availability of records. The employer shall make available, upon request to the Administrator, or a designee, and to the Director of the Division of Health, or a designee, all employee exposure records and employee medical records for examination and copying.

D. Access to records.

1. Records provided for in R614-1-8.A.,E., and F. shall be available for inspection and copying by Compliance Officers during any occupational safety and health inspection provided for under R614-1-7 and Section 34A-6-301 of the Act.

2. The log and summary of all recordable occupational injuries and illnesses (OSHA No. 200) (the log) provided for in R614-1-8.A. shall, upon request, be made available by the employer to any

employee, former employee, and to their representatives for examination and copying in a reasonable manner and at reasonable times. The employee, former employee, and their representatives shall have access to the log for any establishment in which the employee is or has been employed.

3. Nothing in this section shall be deemed to preclude employees and employee representatives from collectively bargaining to obtain access to information relating to occupational injuries and illnesses in addition to the information made available under this section.

4. Access to the log provided under this section shall pertain to all logs retained under requirements of R614-1-8.G.

E. Reporting of fatality or accidents. (Refer to Utah Occupational Safety and Health Rule, R614-1-5.C.)

F. Falsification or failure to keep records or reports.

1. Section 34A-6-307 of the Act provides penalties for false information and recordkeeping.

2. Failure to maintain records or file reports required by this part, or in the details required by forms and instructions issued under this part, may result in the issuance of citations and assessment of penalties as provided for in Sections 34A-6-302 and 34A-6-307 of the Act.

G. Description of statistical program.

1. Section 34A-6-108 of the Act directs the Administrator to develop and maintain a program of collection, compilation, and analysis of occupational safety and health statistics. The program shall consist of periodic surveys of occupational injuries and illnesses.

2. The sample design encompasses probability procedures, detailed stratification by industry and size, and a systematic selection within Stratification. Stratification and sampling will be carried out in order to provide the most efficient sample for eventual state estimates. Some industries will be sampled more heavily than others depending on the injury rate level based on previous experience. The survey should produce adequate estimates for most four-digit Standard Industrial Classification (SIC) industries in manufacturing and for three-digit classification (SIC) in non-manufacturing. Full cooperation with the U. S. Department of Labor in statistical programs is intended.

R614-1-9. Rules of Practice for Temporary or Permanent Variance from the Utah Occupational Safety and Health Standards. (Also Adopted and Published as Chapter XXIII of the Utah Occupational Safety and Health Field Operations Manual.)

A. Scope.

1. This rule contains Rules of Practice for Administrative procedures to grant variances and other relief under Section 34A-6-202 of the Act. General information pertaining to employer-employee rights, obligations and procedures are included.

B. Application for, or petition against Variances and other relief.

1. The applicable parts of Section 34A-6-202 of the Act shall govern application and petition procedure.

2. Any employer or class of employers desiring a variance from a standard must make a formal written request including the following information:

a. The name and address of applicant;

b. The address of the place or places of employment involved;

c. A specification of the standard or portion thereof from which the applicant seeks a variance;

d. A statement by the applicant, supported by opinions from qualified persons having first-hand knowledge of the facts of the case, that he is unable to comply with the standard or portion thereof and a detailed statement of the reasons therefore;

e. A statement of the steps the applicant has taken and will take, with specific dates where appropriate, to protect employees against the hazard covered by the existing standard;

f. A statement of when the applicant expects to be able to comply with the standard and of what steps he has taken and will take, with specific dates where appropriate, to come into compliance with the standards (applies to temporary variances);

g. A statement of the facts the applicant would show to establish that (applies to newly promulgated standards);

(1) The applicant is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date;

(2) He is taking all available steps to safeguard his employees against the hazards covered by the standards; and

(3) He has an effective program for coming into compliance with the standard as quickly as practicable;

h. Any request for a hearing, as provided in this rule;

i. A statement that the applicant has informed his affected employees of the application for variance by giving a copy thereof to their authorized representative, posting a summary statement of the application at the place or places where notices to employees are normally posted specifying where a copy may be examined; and

j. A description of how affected employees have been informed of their rights to petition the Administrator for a hearing.

3. The applicant shall designate the method he will use to safeguard his employees until a variance is granted or denied.

4. Whenever a proceeding on a citation or a related issue concerning a proposed penalty or period of abatement has been contested and is pending before an Administrative Law Judge or any subsequent review under the Administrative Procedures Act, until the completion of such proceeding, the Administrator may deny a variance application on a subject or an issue concerning a citation which has been issued to the employer.

C. Hearings.

1. The Administrator may conduct hearings upon application or petition in accordance with Section 34A-6-202(4) of the Act if:

a. Employee(s), the public, or other interested groups petition for a hearing; or

b. The Administrator deems it in the public or employee interest.

2. When a hearing is considered appropriate, the Administrator shall set the date, time, and place for such hearing. He shall provide timely notification to the applicant for variance and the petitioners. In the notice of hearing to the applicant, the applicant will be directed to notify his employees of the hearing.

3. Notice of hearings shall be published in the Administrative Rulemaking Bulletin. This shall include a statement that the application request may be inspected at the UOSH Division Office.

4. A copy of the Notification of Hearing along with other pertinent information shall be sent to the U.S. Department of Labor, Regional Administrator for OSHA.

~~D. Inspection for Variance Application.~~

~~1. A variance inspection will be required by the Administrator or his designee prior to final determination of either acceptance or denial.~~

~~2. A variance inspection is a single purpose, pre-announced, non-compliance inspection and shall include employee or employer representative participation or interview where necessary.~~

~~E. Interim order.~~

~~1. The purpose of an interim order is to permit an employer to proceed in a non-standard operation while administrative procedures are being completed. Use of this interim procedure is dependent upon need and employee safety.~~

~~2. Following a variance inspection, and after determination and assurance that employees are to be adequately protected, the Administrator may immediately grant, in writing, an interim order. To expedite the effect of the interim order, it may be issued at the work-site by the Administrator. The interim order will remain in force pending completion of the administrative promulgation action and the formal granting or denying of a temporary/permanent variance as requested.~~

~~F. Decision of the Administrator.~~

~~1. The Administrator may deny the application if:~~

~~a. It does not meet the requirements of paragraph R614-1-8.B.;~~

~~b. It does not provide adequate safety in the workplace for affected employees; or~~

~~c. Testimony or information provided by the hearing or inspection does not support the applicant's request for variance as submitted.~~

~~2. Letters of notification denying variance applications shall be sent to the applicant, and will include posting requirements to inform employees, affected associations, and employer groups.~~

~~a. A copy of correspondence related to the denial request shall be sent to the U.S. Department of Labor, Regional Administrator for OSHA.~~

~~b. The letter of denial shall be explicit in detail as to the reason(s) for such action.~~

~~3. The Administrator may grant the request for variances provided that:~~

~~a. Data supplied by the applicant, the UOSHA inspection and information and testimony affords adequate protection for the affected employee(s);~~

~~b. Notification of approval shall follow the pattern described in R614-1-9.C.2. and 3.;~~

~~c. Limitations, restrictions, or requirements which become part of the variance shall be documented in the letter granting the variance.~~

~~4. The Administrator's decision shall be deemed final subject to Section 34A-6-202(6).~~

~~G. Recommended Time Table for Variance Action.~~

~~1. Publication of agency intent to grant a variance. This includes public comment and hearing notification in the Utah Administrative Rulemaking Bulletin: within 30 days after receipt.~~

~~2. Public comment period: within 20 days after publication.~~

~~3. Public hearing: within 30 days after publication~~

~~4. Notification of U.S. Department of Labor Regional Administrator for OSHA: 10 days after agency publication of intent.~~

~~5. Final Order: 120 days after receipt of variance application if publication of agency intent is made.~~

~~6. Rejection of variance application without publication of agency intent: 20 days after receipt of application.~~

~~a. Notification of U.S. Department of Labor Regional Administrator for OSHA: 20 days after receipt of application.~~

~~H. Public Notice of Granted Variances, Tolerances, Exemptions, and Limitations.~~

~~1. Every final action granting variance, exemption, or limitation under this rule shall be published as required under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and the time table set forth in R614-1-9.G.~~

~~I. Acceptance of federally Granted Variances.~~

~~1. Where a variance has been granted by the U.S. Department of Labor, Occupational Safety and Health Administration, following Federal Promulgation procedures, the Administrator shall take the following action:~~

~~a. Compare the federal OSHA standard for which the variance was granted with the equivalent UOSH standard.~~

~~b. Identify possible application in Utah.~~

~~c. If the UOSH standard under consideration for application of the variance has exactly or essentially the same intent as the federal standard and there is the probability of a multi-state employer doing business in Utah, then the Administrator shall accept the variance (as federally accepted) and promulgate it for Utah under the provisions of Title 63G, Chapter 3, Utah Administrative Rulemaking Act.~~

~~d. If the variance has no apparent application to Utah industry, or to a multi-state employer in Utah, or if it conflicts with Utah Legislative intent, or established policy or procedure, the federal variance shall not be accepted. In such case, the Regional Administrator will be so notified.~~

~~J. Revocation of a Variance.~~

~~1. Any variance (temporary or permanent) whether approved by the state or one accepted by State based on Federal approval, may be revoked by the Administrator if it is determined through on-site inspection that:~~

~~a. The employer is not complying with provisions of the variance as granted;~~

~~b. Adequate employee safety is not afforded by the original provisions of the variance; or~~

~~c. A more stringent standard has been promulgated, is in force, and conflicts with prior considerations given for employee safety.~~

~~2. A federally approved national variance may be revoked by the state for a specific work-site or place of employment within the state for reasons cited in R614-1-9.J.1. Such revocations must be in writing and give full particulars and reasons prompting the action. Full rights provided under the law, such as hearings, etc., must be afforded the employer.~~

~~3. Normally, permanent variances may be revoked or changed only after being in effect for at least six months.~~

~~K. Coordination.~~

~~1. All variances issued by the Administrator will be coordinated with the U.S. Department of Labor, OSHA to insure consistency and avoid improper unilateral action.~~

R614-1-10. Discrimination.

~~A. General.~~

~~1. The Act provides, among other things, for the adoption of occupational safety and health standards, research and development activities, inspections and investigations of work places, and record~~

keeping requirements. Enforcement procedures initiated by the Commission; review proceedings as required by Title 63G, Chapter 4, Administrative Procedures Act; and judicial review are provided by the Act.

2. This rule deals essentially with the rights of employees afforded under section 34A-6-203 of the Act. Section 34A-6-203 of the Act prohibits reprisals, in any form, against employees who exercise rights under the Act.

3. The purpose is to make available in one place interpretations of the various provisions of Section 34A-6-203 of the Act which will guide the Administrator in the performance of his duties thereunder unless and until otherwise directed by authoritative decisions of the courts, or concluding, upon reexamination of an interpretation, that it is incorrect.

B. Persons prohibited from discriminating.

Section 34A-6-203 defines employee protections under the Act, because the employee has exercised rights under the Act. Section 34A-6-103(11) of the Act defines "person". Consequently, the prohibitions of Section 34A-6-203 are not limited to actions taken by employers against their own employees. A person may be chargeable with discriminatory action against an employee of another person. Section 34A-6-203 would extend to such entities as organizations representing employees for collective bargaining purposes, employment agencies, or any other person in a position to discriminate against an employee. (See, Meek v. United States, F. 2d 679 (6th Cir., 1943); Bowe v. Judson C. Burnes, 137 F 2d 37 (3rd Cir., 1943).)

C. Persons protected by section 34A-6-203.

1. All employees are afforded the full protection of Section 34A-6-203. For purposes of the Act, an employee is defined in Section 34A-6-103(6). The Act does not define the term "employ". However, the broad remedial nature of this legislation demonstrates a clear legislative intent that the existence of an employment relationship, for purposes of Section 34A-6-203, is to be based upon economic realities rather than upon common law doctrines and concepts. For a similar interpretation of federal law on this issue, see, U.S. v. Silk, 331 U.S. 704 (1947); Rutherford Food Corporation v. McComb, 331 U.S. 722 (1947).

2. For purposes of Section 34A-6-203, even an applicant for employment could be considered an employee. (See, NLRB v. Lamar Creamery, 246 F. 2d 8 (5th Cir., 1957).) Further, because Section 34A-6-203 speaks in terms of any employee, it is also clear that the employee need not be an employee of the discriminator. The principal consideration would be whether the person alleging discrimination was an "employee" at the time of engaging in protected activity.

3. In view of the definitions of "employer" and "employee" contained in the Act, employees of a State or political subdivision thereof would be within the coverage of Section 34A-6-203.

D. Unprotected activities distinguished.

1. Actions taken by an employer, or others, which adversely affect an employee may be predicated upon nondiscriminatory grounds. The proscriptions of Section 34A-6-203 apply when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in activities protected by the Act does not automatically render him immune from discharge or discipline for legitimate reasons, or from adverse action dictated by non-prohibited considerations. (See, NLRB v. Dixie Motor Coach Corp., 128 F. 2d 201 (5th Cir., 1942).)

2. To establish a violation of Section 34A-6-203, the employee's engagement in protected activity need not be the sole consideration behind discharge or other adverse action. If protected activity was a substantial reason for the action, or if the discharge or other adverse action would not have taken place "but for" engagement in protected activity, Section 34A-6-203 has been violated. (See, Mitchell v. Goodyear Tire and Rubber Co., 278 F. 2d 562 (8th Cir., 1960); Goldberg v. Bama Manufacturing, 302 F. 2d 152 (5th Cir., 1962).) Ultimately, the issue as to whether a discharge was because of protected activity will have to be determined on the basis of the facts in the particular case.

E. Specific protections - complaints under or related to the Act.

1. Discharge of, or discrimination against an employee because the employee has filed "any complaint under or related to this Act" is prohibited by Section 34A-6-203. An example of a complaint made "under" the Act would be an employee request for inspection pursuant to Section 34A-6-301(6). However, this would not be the only type of complaint protected by Section 34A-6-203. The range of complaints "related to" the Act is commensurate with the broad remedial purposes of this legislation and the sweeping scope of its application, which entails the full extent of the commerce power. ((See Cong. Rec., vol. 116 P. 42206 December 17, 1970).)

2. Complaints registered with Federal agencies which have the authority to regulate or investigate occupational safety and health conditions are complaints "related to" this Act. Likewise, complaints made to State or local agencies regarding occupational safety and health conditions would be "related to" the Act. Such complaints, however, must relate to conditions at the workplace, as distinguished from complaints touching only upon general public safety and health.

3. Further, the salutary principles of the Act would be seriously undermined if employees were discouraged from lodging complaints about occupational safety and health matters with their employers. Such complaints to employers, if made in good faith, therefore would be related to the Act, and an employee would be protected against discharge or discrimination caused by a complaint to the employer.

F. Proceedings under or related to the act.

1. Discharge of, or discrimination against, any employee because the employee has exercised the employee's rights under or related to this Act is also prohibited by Section 34A-6-203. Examples of proceedings which would arise specifically under the Act would be inspections of work-sites under Section 34A-6-301 of the Act, employee contest of abatement date under Section 34A-6-303 of the Act, employee initiation of proceedings for promulgation of an occupational safety and health standard under Section 34A-6-202 of the Act and Title 63G, Chapter 3, employee application for modification of revocation of a variance under Section 34A-6-202(4)(c) of the Act and R614-1-9., employee judicial challenge to a standard under Section 34A-6-202(6) of the Act, and employee appeal of an order issued by an Administrative Law Judge, Commissioner, or Appeals Board under Section 34A-6-304. In determining whether a "proceeding" is "related to" the Act, the considerations discussed in R614-1-10.G. would also be applicable.

2. An employee need not himself directly institute the proceedings. It is sufficient if he sets into motion activities of others which result in proceedings under or related to the Act.

G. Testimony.

Discharge of, or discrimination against, any employee because the employee "has testified or is about to testify" in proceedings under or related to the Act is also prohibited by Section

34A-6-203. This protection would of course not be limited to testimony in proceedings instituted or caused to be instituted by the employee, but would extend to any statements given in the course of judicial, quasi-judicial, and administrative proceedings, including inspections, investigations, and administrative rulemaking or adjudicative functions. If the employee is giving or is about to give testimony in any proceeding under or related to the Act, he would be protected against discrimination resulting from such testimony.

H. Exercise of any right afforded by the Act.

1. In addition to protecting employees who file complaints, institute proceedings under or related to the Act it also prohibited by Section 34A-6-203 discrimination occurring because of the exercise "of any right afforded by this Act." Certain rights are explicitly provided in the Act; for example, there is a right to participate as a party in enforcement proceedings (34A-6-303). Certain other rights exist by necessary implications. For example, employees may request information from the Utah Occupational Safety and Health Administration; such requests would constitute the exercise of a right afforded by the Act. Likewise, employees interviewed by agents of the Administrator in the course of inspections or investigations could not subsequently be discriminated against because of their cooperation.

2. Review of the Act and examination of the legislative history discloses that, as a general matter, there is no right afforded by the Act which would entitle employees to walk off the job because of potential unsafe conditions at the workplace. Hazardous conditions which may be violative of the Act will ordinarily be corrected by the employer, once brought to his attention. If corrections are not accomplished, or if there is dispute about the existence of a hazard, the employee will normally have opportunity to request inspection of the workplace pursuant to Section 34A-6-301 of the Act, or to seek the assistance of other public agencies which have responsibility in the field of safety and health. Under such circumstances, therefore, an employer would not ordinarily be in violation of Section 34A-6-203 by taking action to discipline an employee for refusing to perform normal job activities because of alleged safety or health hazards.

a. Occasions might arise when an employee is confronted with a choice between not performing assigned tasks or subjecting himself to serious injury or death arising from a hazardous condition at the workplace. If the employee, with no reasonable alternative, refuses in good faith to expose himself to the dangerous condition, he would be protected against subsequent discrimination. The condition causing the employee's apprehension of death or injury must be of such a nature that a reasonable person, under the circumstances then confronting the employee, would conclude that there is a real danger of death or serious injury and that there is insufficient time, due to the urgency of the situation, to eliminate the danger through resort to regular statutory enforcement channels. In addition, in such circumstances, the employee, where possible, must also have sought from his employer, and been unable to obtain, a correction of the dangerous condition.

I. Procedures - Filing of complaint for discrimination.

1. Who may file. A complaint of Section 34A-6-203 discrimination may be filed by the employee himself, or by a representative authorized to do so on his behalf.

2. Nature of filing. No particular form of complaint is required.

3. Place of filing. Complaint should be filed with the Administrator, Division of Occupational Safety and Health, Labor Commission, 160 East 300 South, Salt Lake City, Utah 84114-6650, Telephone 530-6901.

4. Time for filing.

a. Section 34A-6-203(2)(b) provides protection for an employee who believes that he has been discriminated against.

b. A major purpose of the 30-day period in this provision is to allow the Administrator to decline to entertain complaints which have become stale. Accordingly, complaints not filed within 30 days of an alleged violation will ordinarily be presumed to be untimely.

c. However, there may be circumstances which would justify tolling of the 30-day period on recognized equitable principles or because of strongly extenuating circumstances, e.g., where the employer has concealed, or misled the employee regarding the grounds for discharge or other adverse action; where the employee has, within the 30-day period, resorted in good faith to grievance-arbitration proceedings under a collective bargaining agreement or filed a complaint regarding the same general subject with another agency; where the discrimination is in the nature of a continuing violation. In the absence of circumstances justifying a tolling of the 30-day period, untimely complaints will not be processed.

J. Notification of administrator's determination.

The Administrator is to notify a complainant within 90 days of the complaint of his determination whether prohibited discrimination has occurred. This 90-day provision is considered directory in nature. While every effort will be made to notify complainants of the Administrator's determination within 90 days, there may be instances when it is not possible to meet the directory period set forth in this section.

K. Withdrawal of complaint.

Enforcement of the provisions of Section 34A-6-203 is not only a matter of protecting rights of individual employees, but also of public interest. Attempts by an employee to withdraw a previously filed complaint will not necessarily result in termination of the Administrator's investigation. The Administrator's jurisdiction cannot be foreclosed as a matter of law by unilateral action of the employee. However, a voluntary and uncoerced request from a complainant to withdraw his complaint will be given careful consideration and substantial weight as a matter of policy and sound enforcement procedure.

L. Arbitration or other agency proceedings.

1. An employee who files a complaint under Section 34A-6-203(2) of the Act may also pursue remedies under grievance arbitration proceedings in collective bargaining agreements. In addition, the complainant may concurrently resort to other agencies for relief, such as the National Labor Relations Board. The Administrator's jurisdiction to entertain Section 34A-6-203 complaints, to investigate, and to determine whether discrimination has occurred, is independent of the jurisdiction of other agencies or bodies. The Administrator may file action in district court regardless of the pendency of other proceedings.

2. However, the Administrator also recognizes the policy favoring voluntary resolution of disputes under procedures in collective bargaining agreements. (See, e.g., Boy's Market, Inc. v. Retail Clerks, 398 U.S. 235 (1970); Republic Steel Corp. v. Maddox, 379 U.S. 650 (1965); Carey v. Westinghouse Electric Co., 375 U.S. 261 (1964); Collier Insulated Wire, 192 NLRB No. 150 (1971).) By the same token, due deference should be paid to the jurisdiction of other forums established to resolve disputes which may also be related to Section 34A-6-203 complaints.

3. Where a complainant is in fact pursuing remedies other than those provided by Section 34A-6-203, postponement of the Administrator's determination and deferral to the results of such proceedings may be in order. (See, Burlington Truck Lines, Inc., v. U.S., 371 U.S. 156 (1962).)

4. Postponement of determination. Postponement of determination would be justified where the rights asserted in other proceedings are substantially the same as rights under Section 34A-6-203 and those proceedings are not likely to violate the rights guaranteed by Section 34A-6-203. The factual issues in such proceedings must be substantially the same as those raised by Section 34A-6-203 complaint, and the forum hearing the matter must have the power to determine the ultimate issue of discrimination. (See, Rios v. Reynolds Metals Co., F. 2d (5th Cir., 1972), 41 U.S.L.W. 1049 (October 10, 1972); Newman v. Aveo Corp., 451 F. 2d 743 (6th Cir., 1971).)

5. Deferral to outcome of other proceedings. A determination to defer to the outcome of other proceedings initiated by a complainant must necessarily be made on a case-to-case basis, after careful scrutiny of all available information. Before deferring to the results of other proceedings, it must be clear that those proceedings dealt adequately with all factual issues, that the proceedings were fair, regular, and free of procedural infirmities, and that the outcome of the proceedings was not repugnant to the purpose and policy of the Act. In this regard, if such other actions initiated by a complainant are dismissed without adjudicative hearing thereof, such dismissal will not ordinarily be regarded as determinative of the Section 34A-6-203 complaint.

M. Employee refusal to comply with safety rules.

Employees who refuse to comply with occupational safety and health standards or valid safety rules implemented by the employer in furtherance of the Act are not exercising any rights afforded by the Act. Disciplinary measures taken by employers solely in response to employee refusal to comply with appropriate safety rules and regulations, will not ordinarily be regarded as discriminatory action prohibited by Section 34A-6-203. This situation should be distinguished from refusals to work, as discussed in R614-1-10.H.

R614-1-11. Rules of Agency Practice and Procedure Concerning UOSH Access to Employee Medical Records.

A. Policy.

UOSH access to employee medical records will in certain circumstances be important to the agency's performance of its statutory functions. Medical records, however, contain personal details concerning the lives of employees. Due to the substantial personal privacy interests involved, UOSH authority to gain access to personally identifiable employee medical information will be exercised only after the agency has made a careful determination of its need for this information, and only with appropriate safeguards to protect individual privacy. Once this information is obtained, UOSH examination and use of it will be limited to only that information needed to accomplish the purpose for access. Personally identifiable employee medical information will be retained by UOSH only for so long as needed to accomplish the purpose for access, will be kept secure while being used, and will not be disclosed to other agencies or members of the public except in narrowly defined circumstances. This section establishes procedures to implement these policies.

B. Scope.

1. Except as provided in paragraphs R614-1-11.B.3. through 6. below, this rule applies to all requests by UOSH personnel to obtain access to records in order to examine or copy personally identifiable employee medical information, whether or not pursuant to the access provision of R614-1-12.D.

2. For the purposes of this rule, "personally identifiably employee medical information" means employee medical information accompanied by either direct identifiers (name, address, social security number, payroll number, etc.) or by information which could reasonably be used in the particular circumstances indirectly to identify specific employees (e.g., exact age, height, weight, race, sex, date of initial employment, job title, etc.).

3. This rule does not apply to UOSH access to, or the use of, aggregate employee medical information or medical records on individual employees which is not a personally identifiable form. This section does not apply to records required by R614-1-8 to death certificates, or to employee exposure records, including biological monitoring records defined by R614-1-3.M. or by specific occupational safety and health standards as exposure records.

4. This rule does not apply where UOSH compliance personnel conduct an examination of employee medical records solely to verify employer compliance with the medical surveillance record keeping requirements of an occupational safety and health standard, or with R614-1-12. An examination of this nature shall be conducted on-site and, if requested, shall be conducted under the observation of the record holder. The UOSH compliance personnel shall not record and take off-site any information from medical records other than documentation of the fact of compliance or non-compliance.

5. This rule does not apply to agency access to, or the use of, personally identifiable employee medical information obtained in the course of litigation.

6. This rule does not apply where a written directive by the Administrator authorizes appropriately qualified personnel to conduct limited reviews of specific medical information mandated by an occupational safety and health standard, or of specific biological monitoring test results.

7. Even if not covered by the terms of this rule, all medically related information reported in a personally identifiable form shall be handled with appropriate discretion and care befitting all information concerning specific employees. There may, for example, be personal privacy interests involved which militate against disclosure of this kind of information to the public.

C. Responsible persons.

1. UOSH Administrator. The Administrator of the Division of Occupational Safety and Health of the Labor Commission shall be responsible for the overall administration and implementation of the procedures contained in this rule, including making final UOSH determinations concerning:

a. Access to personally identifiable employee medical information, and

b. Inter-agency transfer or public disclosure of personally identifiable employee medical information.

2. UOSH Medical Records Officer. The Administrator shall designate a UOSH official with experience or training in the evaluation, use, and privacy protection of medical records to be the UOSH Medical Records Officer. The UOSH Medical Records Officer shall report directly to the Administrator on matters concerning this section and shall be responsible for:

a. Making recommendations to the Administrator as to the approval or denial of written access orders.

b. Assuring that written access orders meet the requirements of paragraphs R614-1-11.D.2. and 3. of this rule.

c. Responding to employee, collective bargaining agent, and employer objections concerning written access orders.

d. Regulating the use of direct personal identifiers.

e. Regulating internal agency use and security of personally identifiable employee medical information.

f. Assuring that the results of agency analyses of personally identifiable medical information are, where appropriate, communicated to employees.

g. Preparing an annual report of UOSH's experience under this rule.

h. Assuring that advance notice is given of intended inter-agency transfers or public disclosures.

3. Principal UOSH Investigator. The Principal UOSH Investigator shall be the UOSH employee in each instance of access to personally identifiable employee medical information who is made primarily responsible for assuring that the examination and use of this information is performed in the manner prescribed by a written access order and the requirements of this section. When access is pursuant to a written access order, the Principal UOSH Investigator shall be professionally trained in medicine, public health, or allied fields (epidemiology, toxicology, industrial hygiene, bio-statistics, environmental health, etc.)

D. Written access orders.

1. Requirement for written access order. Except as provided in paragraph R614-1-11.D.4. below, each request by a UOSH representative to examine or copy personally identifiable employee medical information contained in a record held by an employer or other record holder shall be made pursuant to a written access order which has been approved by the Administrator upon the recommendation of the UOSH Medical Records Officer. If deemed appropriate, a written access order may constitute, or be accompanied by an administrative subpoena.

2. Approval criteria for written access order. Before approving a written access order, the Administrator and the UOSH Medical Records Officer shall determine that:

a. The medical information to be examined or copied is relevant to a statutory purpose and there is a need to gain access to this personally identifiable information.

b. The personally identifiable medical information to be examined or copied is limited to only that information needed to accomplish the purpose for access, and

c. The personnel authorized to review and analyze the personally identifiable medical information are limited to those who have a need for access and have appropriate professional qualifications.

3. Content of written access order. Each written access order shall state with reasonable particularity:

a. The statutory purposes for which access is sought.

b. The general description of the kind of employee medical information that will be examined and why there is a need to examine personally identifiable information.

c. Whether medical information will be examined on-site, and what type of information will be copied and removed off-site.

d. The name, address, and phone number of the Principal UOSH Investigator and the names of any other authorized persons who are expected to review and analyze the medical information.

e. The name, address, and phone number of the UOSH Medical Records Officer, and

f. The anticipated period of time during which UOSH expects to retain the employee medical information in a personally identifiable form.

4. Special situations. Written access orders need not be obtained to examine or copy personally identifiable employee medical information under the following circumstances:

a. Specific written consent. If the specific written consent of an employee is obtained pursuant to R614-1-12.D., and the agency or an agency employee is listed on the authorization as the designated representative to receive the medical information, then a written access order need not be obtained. Whenever personally identifiable employee medical information is obtained through specific written consent and taken off-site, a Principal UOSH Investigator shall be promptly named to assure protection of the information, and the UOSH Medical Records Officer shall be notified of this person's identity. The personally identifiable medical information obtained shall thereafter be subject to the use and security requirements of paragraphs R614-1-11.H.

b. Physician consultations. A written access order need not be obtained where a UOSH staff or contract physician consults with an employer's physician concerning an occupational safety or health issue. In a situation of this nature, the UOSH physician may conduct on-site evaluation of employee medical records in consultation with the employer's physician, and may make necessary personal notes of his or her findings. No employee medical records however, shall be taken off-site in the absence of a written access order or the specific written consent of an employee, and no notes of personally identifiable employee medical information made by the UOSH physician shall leave his or her control without the permission of the UOSH Medical Records Officer.

E. Presentation of written access order and notice to employees.

1. The Principal UOSH Investigator, or someone under his or her supervision, shall present at least two (2) copies each of the written access order and an accompanying cover letter to the employer prior to examining or obtaining medical information subject to a written access order. At least one copy of the written access order shall not identify specific employees by direct personal identifier. The accompanying cover letter shall summarize the requirements of this section and indicate that questions or objections concerning the written access order may be directed to the Principal UOSH Investigator or to the UOSH Medical Records Officer.

2. The Principal UOSH Investigator shall promptly present a copy of the written access order (which does not identify specific employees by direct personal identifier) and its accompanying cover letter to each collective bargaining agent representing employees whose medical records are subject to the written access order.

3. The Principal UOSH Investigator shall indicate that the employer must promptly post a copy of the written access order which does not identify specific employees by direct personal identifier, as well as post its accompanying cover letter.

4. The Principal UOSH Investigator shall discuss with any collective bargaining agent and with the employer the appropriateness

~~of individual notice to employees affected by the written access order. Where it is agreed that individual notice is appropriate, the Principal UOSH Investigator shall promptly provide to the employer an adequate number of copies of the written access order (which does not identify specific employees by direct personal identifier) and its accompanying cover letter to enable the employer either to individually notify each employee or to place a copy in each employee's medical file.~~

~~F. Objections concerning a written access order. All employees, collective bargaining agents, and employer written objections concerning access to records pursuant to a written access order shall be transmitted to the UOSH Medical Records Officer. Unless the agency decides otherwise, access to the record shall proceed without delay notwithstanding the lodging of an objection. The UOSH Medical Records Officer shall respond in writing to each employee's and collective bargaining agent's written objection to UOSH access. Where appropriate, the UOSH Medical Records Officer may revoke a written access order and direct that any medical information obtained by it by returned to the original record holder or destroyed. The principal UOSH Investigator shall assure that such instructions by the UOSH Medical Records Officer are promptly implemented.~~

~~G. Removal of direct personal identifiers. Whenever employees medical information obtained pursuant to a written access order is taken off-site with direct personal identifiers included, the Principal UOSH Investigator shall, unless otherwise authorized by the UOSH Medical Records Officer, promptly separate all direct personal identifiers from the medical information, and code the medical information and the list of direct identifiers with a unique identifying number of each employee. The medical information with its numerical code shall thereafter be used and kept secured as though still in a directly identifiable form. The Principal UOSH Investigator shall also hand deliver or mail the list of direct personal identifiers with their corresponding numerical codes to the UOSH Medical Records Officer. The UOSH Medical Records Officer shall thereafter limit the use and distribution of the list of coded identifiers to those with a need to know its contents.~~

~~H. Internal agency use of personally identifiable employee medical information.~~

~~1. The Principal UOSH Investigator shall in each instance of access be primarily responsible for assuring that personally identifiable employee medical information is used and kept secured in accordance with this section.~~

~~2. The Principal UOSH Investigator, the UOSH Medical Records Officer, the Administrator, and any other authorized person listed on a written access order may permit the examination or use of personally identifiable employee medical information by agency employees and contractors who have a need for access, and appropriate qualifications for the purpose for which they are using the information. No UOSH employee or contractor is authorized to examine or otherwise use personally identifiable employee medical information unless so permitted.~~

~~3. Where a need exists, access to personally identifiable employee medical information may be provided to attorneys in the office of the State Attorney General, and to agency contractors who are physicians or who have contractually agreed to abide by the requirements of this section and implementing agency directives and instructions.~~

~~4. UOSH employees and contractors are only authorized to use personally identifiable employee medical information for the purposes for which it was obtained, unless the specific written consent of the employee is obtained as to a secondary purpose, or the procedures of R614-1-11.D. through G. are repeated with respect to the secondary purpose.~~

~~5. Whenever practicable, the examination of personally identifiable employee medical information shall be performed on-site with a minimum of medical information taken off-site in a personally identifiable form.~~

~~I. Security procedures.~~

~~1. Agency files containing personally identifiable employee medical information shall be segregated from other agency files. When not in active use, files containing this information shall be kept secured in a locked cabinet or vault.~~

~~2. The UOSH Medical Records Officer and the Principal UOSH Investigator shall each maintain a log of uses and transfers of personally identifiable employee medical information and lists of coded direct personal identifiers, except as to necessary uses by staff under their direct personal supervision.~~

~~3. The photocopying or other duplication of personally identifiable employee medical information shall be kept to the minimum necessary to accomplish the purposes for which the information was obtained.~~

~~4. The protective measures established by this rule apply to all worksheets, duplicate copies, or other agency documents containing personally identifiable employee medical information.~~

~~5. Intra-agency transfers of personally identifiable employee medical information shall be by hand delivery, United States mail, or equally protective means. Inter-office mailing channels shall not be used.~~

~~J. Retention and destruction of records.~~

~~1. Consistent with UOSH records disposition programs, personally identifiable employee medical information and lists of coded direct personal identifiers shall be destroyed or returned to the original record holder when no longer needed for the purposes for which they were obtained.~~

~~2. Personally identifiable employee medical information which is currently not being used actively but may be needed for future use shall be transferred to the UOSH Medical Records Officer. The UOSH Medical Records Officer shall conduct an annual review of all centrally-held information to determine which information is no longer needed for the purposes for which it was obtained.~~

~~K. Results of an agency analysis using personally identifiable employee medical information.~~

~~1. The UOSH Medical Records Officer shall, as appropriate, assure that the results of an agency analysis using personally identifiable employee medical information are communicated to the employees whose personal medical information was used as a part of the analysis.~~

~~2. Annual report. The UOSH Medical Records Officer shall on an annual basis review UOSH's experience under this section during the previous year, and prepare a report to the UOSH Administrator which shall be made available to the public. This report shall discuss:~~

~~a. The number of written access orders approved and a summary of the purposes for access;~~

~~b. The nature and disposition of employee; collective bargaining agent, and employer written objections concerning UOSH access to personally identifiable employee medical information; and~~

c. The nature and disposition of requests for inter-agency transfer or public disclosure of personally identifiable employee medical information.

L. Inter-agency transfer and public disclosure.

1. Personally identifiable employee medical information shall not be transferred to another agency or office outside of UOSH (other than to The Attorney General's Office) or disclosed to the public (other than to the affected employee or the original record holder) except when required by law or when approved by the Administrator.

2. Except as provided in paragraph R614-1-11.L.3. below, the Administrator shall not approve a request for an inter-agency transfer of personally identifiable employee medical information, which has not been consented to by the affected employees, unless the request is by a public health agency which:

a. Needs the requested information in a personally identifiable form for a substantial public health purpose;

b. Will not use the requested information to make individual determinations concerning affected employees which could be to their detriment;

c. Has regulations or established written procedures providing protection for personally identifiable medical information substantially equivalent to that of this section; and

d. Satisfies an exemption to the Privacy Act to the extent that the Privacy Act applies to the requested information (See 5 U.S.C. 552a(b); 29 CFR 70a.3).

3. Upon the approval of the Administrator, personally identifiable employee medical information may be transferred to:

a. The National Institute for Occupational Safety and Health (NIOSH).

b. The Department of Justice when necessary with respect to a specific action under the federal Occupational Safety and Health Act of 1970 and Utah Occupational Safety and Health Act of 1973.

4. The Administrator shall not approve a request for public disclosure of employee medical information containing direct personal identifiers unless there are compelling circumstances affecting the health or safety of an individual.

5. The Administrator shall not approve a request for public disclosure of employee medical information which contains information which could reasonably be used indirectly to identify specific employees when the disclosure would constitute a clearly unwarranted invasion of personal privacy.

6. Except as to inter-agency transfers to NIOSH or the State Attorney General's Office, the UOSH Medical Records Officer shall assure that advance notice is provided to any collective bargaining agent representing affected employees and to the employer on each occasion that UOSH intends to either transfer personally identifiable employee medical information to another agency or disclose it to a member of the public other than to an affected employee. When feasible, the UOSH Medical Records Officer shall take reasonable steps to assure that advance notice is provided to affected employees when the employee medical information to be released or disclosed contains direct personal identifiers.

M. Effective date.

This rule shall become effective on January 15, 1981.

R614-1-12. Access to Employee Exposure and Medical Records.

A. Purpose.

To provide employees and their designated representatives a right of access to relevant exposure and medical records, and to provide representatives of the Administrator a right of access to these records in order to fulfill responsibilities under the Utah Occupational Safety and Health Act. Access by employees, their representatives, and the Administrator is necessary to yield both direct and indirect improvements in the detection, treatment, and prevention of occupational disease. Each employer is responsible for assuring compliance with this Rule, but the activities involved in complying with the access to medical records provisions can be carried out, on behalf of the employer, by the physician or other health care personnel in charge of employee medical records. Except as expressly provided, nothing in this Rule is intended to affect existing legal and ethical obligations concerning the maintenance and confidentiality of employee medical information, the duty to disclose information to a patient/employee or any other aspect of the medical-care relationship, or affect existing legal obligations concerning the protection of trade secret information.

B. Scope.

1. This rule applies to each general industry, maritime, and construction employer who makes, maintains, contracts for, or has access to employee exposure or medical records, or analyses thereof, pertaining to employees exposed to toxic substances or harmful physical agents.

2. This rule applies to all employee exposure and medical records, and analyses thereof, of employees exposed to toxic substances or harmful physical agents, whether or not the records are related to specific occupational safety and health standards.

3. This rule applies to all employee exposure and medical records, and analyses thereof, made or maintained in any manner, including on an in-house or contractual (e.g., fee-for-service) basis. Each employer shall assure that the preservation and access requirements of this rule are complied with regardless of the manner in which records are made or maintained.

C. Preservation of records.

1. Unless a specific occupational safety and health standard provides a different period of time, each employer shall assure the preservation and retention of records as follows:

a. Employee medical records. Each employee medical record shall be preserved and maintained for a least the duration of employment plus thirty (30) years, except that health insurance claims records maintained separately from the employer's medical program and its records need not be retained for any specified period.

b. Employee exposure records. Each employee exposure record shall be preserved and maintained for at least thirty (30) years, except that:

(1) Background data to environmental (workplace) monitoring or measuring, such a laboratory reports and worksheets, need only be retained for one (1) year so long as the sampling results, the collection methodology (sampling plan), a description of the analytical and mathematical methods used, and a summary of other background data relevant to interpretation of the results obtained, are retained for at least thirty (30) years; and

(2) Material safety data sheets and paragraph R614-1-3.M.4. records concerning the identity of a substance or agent need not be retained for any specified period as long as some record of the identity (chemical name if known) of the substance or agent, where it was used, and when it was used is retained for at least thirty (30) years; and

~~c. Analyses using exposure or medical records. Each analysis using exposure or medical records shall be preserved and maintained for at least thirty (30) years.~~

~~2. Nothing in this rule is intended to mandate the form, manner, or process by which an employer preserves a record so long as the information contained in the record is preserved and retrievable, except that X-ray films shall be preserved in their original state.~~

~~D. Access to records.~~

~~1. Whenever an employee or designated representative requests access to a record, the employer shall assure that access is provided in a reasonable time, place, and manner, but in no event later than fifteen (15) days after the request for access is made.~~

~~2. Whenever an employee or designated representative requests a copy of a record, the employer shall, within the period of time previously specified, assure that either:~~

~~a. A copy of the record is provided without cost to the employee or representative;~~

~~b. The necessary mechanical copying facilities (e.g., photocopying) are made available without cost to the employee or representative for copying the record; or~~

~~c. The record is loaned to the employee or representative for a reasonable time to enable a copy to be made.~~

~~3. Whenever a record has been previously provided without cost to an employee or designated representative, the employer may charge reasonable, non-discriminatory administrative costs (i.e., search and copy expenses but not including overhead expenses) for a request by the employee or designated representative for additional copies of the record, except that:~~

~~a. An employer shall not charge for an initial request for a copy of new information that has been added to a record which was previously provided; and~~

~~b. An employer shall not charge for an initial request by a recognized or certified collective bargaining agent for a copy of an employee exposure record or an analysis using exposure or medical records.~~

~~4. Nothing in this rule is intended to preclude employees and collective bargaining agents from collectively bargaining to obtain access to information in addition to that available under this rule.~~

~~5. Employee and designated representative access.~~

~~a. Employee exposure records. Each employer shall, upon request, assure the access of each employee and designated representative to employee exposure records relevant to the employee. For the purpose of this rule exposure records relevant to the employee consist of:~~

~~(1) Records of the employee's past or present exposure to toxic substances or harmful physical agents;~~

~~(2) Exposure records of other employees with past or present job duties or working conditions related to or similar to those of the employee;~~

~~(3) Records containing exposure information concerning the employee's workplace or working conditions; and~~

~~(4) Exposure records pertaining to workplaces or working conditions to which the employee is being assigned or transferred.~~

~~b. Employee medical records.~~

~~(1) Each employer shall, upon request, assure the access of each employee to employee medical records of which the employee is the subject, except as provided in R614-1-12.D.4.~~

~~(2) Each employer shall, upon request, assure the access of each designated representative to the employee medical records of any employee who has given the designated representative specific written consent. R614-1-12A., Appendix A to R614-1-12., contains a sample form which may be used to establish specific written consent for access to employee medical records.~~

~~(3) Whenever access to employee medical records is requested, a physician representing the employer may recommend that the employee or designated representative:~~

~~(a) Consult with the physician for the purposes of reviewing and discussing the records requested;~~

~~(b) Accept a summary of material facts and opinions in lieu of the records requested;, or~~

~~(c) Accept release of the requested records only to a physician or other designated representative.~~

~~(4) Whenever an employee requests access to his or her employee medical records, and a physician representing the employer believes that direct employee access to information contained in the records regarding a specific diagnosis of a terminal illness or a psychiatric condition could be detrimental to the employees health, the employer may inform the employee that access will only be provided to a designated representative of the employee having specific written consent, and deny the employee's request for direct access to this information only. Where a designated representative with specific written consent requests access to information so withheld, the employer shall assure the access of the designated representative to this information, even when it is known that the designated representative will give the information to the employee.~~

~~(5) Nothing in this rule precludes physician, nurse, or other responsible health care personnel maintaining employee medical records from deleting from requested medical records the identity of a family member, personal friend, or fellow employee who has provided confidential information concerning an employee's health status.~~

~~c. Analysis using exposure or medical records.~~

~~(1) Each employer shall, upon request, assure the access of each employee and designated representative to each analysis using exposure or medical records concerning the employee's working conditions or workplace.~~

~~(2) Whenever access is requested to an analysis which reports the contents of employee medical records by either direct identifier (name, address, social security number, payroll number, etc.) or by information which could reasonably be used under the circumstances indirectly to identify specific employees (exact age, height, weight, race, sex, date of initial employment, job title, etc.) the employer shall assure that personal identifiers are removed before access is provided. If the employer can demonstrate that removal of personal identifiers from an analysis is not feasible, access to the personally identifiable portions of analysis need not be provided.~~

~~(3) UOSH access.~~

~~(a) Each employer shall, upon request, assure the immediate access of representatives of the Administrator to employee exposure and medical records and to analysis using exposure or medical records. Rules of agency practice and procedure governing UOSH access to employee medical records are contained in R614-1-8.~~

~~(b) Whenever UOSH seeks access to personally identifiable employee medical information by presenting to the employer a written access order pursuant to R614-1-8, the employer shall prominently post a copy of the written access order and its accompanying cover letter for at least fifteen (15) working days.~~

E. Trade Secrets.

1. Except as provided in paragraph R614-1-12.E.2., nothing in this rule precludes an employer from deleting from records requested by an employee or designated representative any trade secret data which discloses manufacturing processes, or discloses the percentage of a chemical substance in a mixture, as long as the employee or designated representative is notified that information has been deleted. Whenever deletion of trade secret information substantially impairs evaluation of the place where or the time when exposure to a toxic substance or harmful physical agent occurred, the employer shall provide alternative information which is sufficient to permit the employee to identify where and when exposure occurred.

2. Notwithstanding any trade secret claims, whenever access to records is requested, the employer shall provide access to chemical or physical agent identities including chemical names, levels of exposure, and employee health status data contained in the requested records.

3. Whenever trade secret information is provided to an employee or designated representative, the employer may require, as a condition of access, that the employee or designated representative agree in writing not to use the trade secret information for the purpose of commercial gain and not to permit misuse of the trade secret information by a competitor or potential competitor of the employer.

F. Employee information.

1. Upon an employee's first entering into employment, and at least annually thereafter, each employer shall inform employees exposed to toxic substances or harmful physical agents of the following;

a. The existence, location, and availability of any records covered by this rule;

b. The person responsible for maintaining and providing access to records; and

c. Each employee's right of access to these records.

2. Each employer shall make readily available to employees a copy of this rule and its appendices, and shall distribute to employees any informational materials concerning this rule which are made available to the employer by the Administrator.

G. Transfer of Records

1. Whenever an employer is ceasing to do business, the employer shall transfer all records subject to this Rule to the successor employer. The successor employer shall receive and maintain these records.

2. Whenever an employer is ceasing to do business and there is no successor employer to receive and maintain the records subject to this standard, the employer shall notify affected employees of their rights of access to records at least three (3) months prior to the cessation of the employer's business.

3. Whenever an employer either is ceasing to do business and there is no successor employer to receive and maintain the records, or intends to dispose of any records required to be preserved for at least thirty (30) years, the employer shall:

a. Transfer the records to the Director of the National Institute for Occupational Safety and Health (NIOSH) if so required by a specific occupational safety and health standard; or

b. Notify the Director of NIOSH in writing of the impending disposal of records at least three (3) months prior to the disposal of the records.

4. Where an employer regularly disposes of records required to be preserved for at least thirty (30) years, the employer may, with at least (3) months notice, notify the Director of NIOSH on an annual basis of the records intended to be disposed of in the coming year.

a. Appendices. The information contained in the appendices to this rule is not intended, by itself, to create any additional obligations not otherwise imposed by this rule nor detract from any existing obligation.

H. Effective date. This rule shall become effective on December 5, 1980. All obligations of this rule commence on the effective date except that the employer shall provide the information required under R614-1-12.F.1. to all current employees within sixty (60) days after the effective date.

R614-1-12A. Appendix A to R614-1-12 SAMPLE.

Authorization letter for the Release of Employee Medical Record Information to Designated Representative.

I, (full name of worker/patient), hereby authorize (individual or organization holding the medical records), to release to (individual or organization authorized to receive the medical information), the following medical information from my personal medical records: (Describe generally the information desired to be released).

I give my permission for this medical information to be used for the following purpose: ....., but I do not give permission for any other use or re-disclosure of this information.

(Note---Several extra lines are provided below so that you can place additional restrictions on this authorization letter if you want to. You may, however, leave these lines blank. On the other hand, you may want to (1) specify a particular expiration date for this letter (if less than one year): (2) describe medical information to be created in the future that you intend to be covered by this authorization letter, or (3) describe portions of the medical information in you records which you do not intend to be released as a result of this letter.)

Full name of Employee or Legal Representative

Signature of Employee or Legal Representative

Date of Signature

R614-1-12B. Appendix B to R614-1-12 Availability of NIOSH Registry of Toxic Effects of Chemical Substances (RTECS).

R614-1-12 applies to all employee exposure and medical records, and analysis thereof, of employees exposed to toxic substances or harmful physical agents (see R614-1-12.B.2.). The term "toxic substance" or "harmful physical agent" is defined by paragraph R614-1-3.FF. to encompass chemical substances, biological agents, and physical stresses for which there is evidence of harmful health effects. The standard uses the latest printed edition of the National Institute for Occupational Safety and Health (NIOSH) Registry of Toxic Effects of Chemical Substances (RTECS) as one of the chief sources of information as to whether evidence of harmful health effects exists. If a substance is listed in the latest printed RTECS, the standard applies to exposure and medical records (and analysis of these records) relevant to employees exposed to the substances.

It is appropriate to note that the final standard does not require that employers purchase a copy of RTECS and many employers need not consult RTECS to ascertain whether their employee exposure or medical records are subject to the standard. Employers who do not currently have the latest printed edition of the NIOSH RTECS, however, may desire to obtain a copy. The RTECS is issued in an annual printed edition as mandated by Rule 20(a)(6) of the Occupational Safety and Health Act (29 U.S.C. 669 (a)(6)). The 1978

~~edition is the most recent printed edition as of May 1, 1980. Its Forward and Introduction describes the RTECS as follows:~~

~~"The annual publication of a list of known toxic substances is a NIOSH mandate under the Occupational Safety and Health Act of 1970. It is intended to provide basic information on the known toxic and biological effects of chemical substances for the use of employers, employees, physicians, industrial hygienists, toxicologists, researchers, and, in general, anyone concerned with the proper and safe handling of chemicals. In turn, this information may contribute to a better understanding of potential occupational hazards by everyone involved and ultimately may help to bring about a more healthful workplace environment.~~

~~"This registry contains 142,247 listings of chemical substances: 33,929 are names of different chemicals with their associated toxicity data and 90,318 are synonyms. This edition includes approximately 7,500 new chemical compounds that did not appear in the 1977 Registry.~~

~~"The Registry's purposes are many, and it serves a variety of users. It is a single source document for basic toxicity information and for other data, such as chemical identifiers and information necessary for the preparation of safety directives and hazard evaluations for chemical substances. The various types of toxic effects linked to literature citations provide researchers and occupational health scientists with an introduction to the toxicological literature, making their own review of the toxic hazards of a given substance easier. By presenting data on the lowest reported doses that produce effects by several routes of entry in various species, the Registry furnishes valuable information to those responsible for preparing safety data sheets for chemical substances in the workplace. Chemical and production engineers can use the Registry to identify the hazards which may be associated with chemical intermediates in the development of final products, and thus can more readily select substitutes or alternate processes which may be less hazardous.~~

~~"In this edition of the Registry, the editors intend to identify "all known toxic substances" which may exist in the environment and to provide pertinent data on the toxic effects from known does entering an organism by any route described. Data may be used for the evaluation of chemical hazards in the environment, whether they be in the workplace, recreation area, or living quarters.~~

~~"It must be reemphasized that the entry of a substance in the Registry does not automatically mean that it must be avoided. A listing does mean, however, that the substance has the documented potential of being harmful if misused, and care must be exercised to prevent tragic consequences."~~

~~The RTECS 1978 printed edition may be purchased for $13.00 from the Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, D.C. 20402 (202-783-3238) (GPO Stock No. 017-033-00346-7). The 1979 printed edition is anticipated to be issued in the summer of 1980. Some employers may also desire to subscribe to the quarterly update to the RTECS which is published in a microfiche edition. An annual subscription to the quarterly microfiche may be purchase from the GPO for $14.00 (Order the "Microfiche Edition. Registry of Toxic Effects of Chemical Substances"). Both the printed edition and the microfiche edition of RTECS are available for review at many university and public libraries throughout the country. The latest RTECS editions may also be examined at OSHA Technical Data Center, Room N2439-Rear, United States Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 (202-523-9700), or any OSHA Regional or Area Office (See major city telephone directories under United States Government-Labor Department).~~]

R614-1-1. Authority.

A. These rules and all subsequent revisions, as approved and promulgated by the Labor Commission (commission), Utah Occupational Safety and Health Division (UOSH), are authorized pursuant to the Utah Occupational Safety and Health Act, Utah Code Ann. 34A-6-101 et seq., of 1973 (Utah OSH Act).

B. The intent and purpose of this chapter is stated in section 34A-6-102 of the Utah OSH Act.

C. In accordance with legislative intent, these rules provide for the safety and health of workers and for the administration of this chapter by UOSH.

R614-1-2. Scope.

These rules consist of administrative procedures of UOSH, incorporating by reference applicable federal standards from 29 CFR 1904, 1908, 1910 and 1926, and the Utah initiated occupational safety and health standards found in Utah Administrative Code (UAC) R614-1 through R614-10.

R614-1-3. Definitions.

A. "Access" means the right and opportunity to examine and copy.

B. "Adjudication" means the Adjudication Division within the Labor Commission.

C. "Administrator" means the director of UOSH.

D. "AG's Office" means the Utah Office of the Attorney General.

E, "CFR" means the Code of Federal Regulations.

F. "Commission" means the Labor Commission.

G. "CSHO" means a compliance safety and health officer authorized by UOSH to conduct inspections and investigations.

H. "Days" means calendar days, including Saturdays, Sundays, and holidays. The day of receipt of any notice shall not be included, and the last day of any time frame shall be included. If the last day of any time period is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday or legal holiday.

I. "Disabling, serious or significant injury" means any injury resulting in:

1. Admittance to the hospital; or

2. Permanent or temporary impairment, where function of any part of the body is substantially reduced or made useless and which would require treatment by a physician or other licensed health care professional. Examples of a disabling, serious or significant injury include, but are not limited to, amputation, fracture, deep laceration, severe burn (thermal, chemical, etc.), electrical burn, sight impairment, loss of consciousness and concussion.

J. "Division" means UOSH.

K. Employee medical record.

1. "Employee medical record" means a record concerning the health status of an employee which is made or maintained by a physician, nurse, or other health care personnel, or technician including:

a. Medical and employment questionnaires or histories (including job description and occupational exposures);

b. The results of medical examinations (pre-employment, pre-assignment, periodic, or episodic) and laboratory tests (including

X-ray examinations and all biological monitoring not defined as an "employee exposure record" in 29 CFR 1910.1020(c)(5));

c. Medical opinions, diagnoses, progress notes, and recommendations;

d. Descriptions of treatments and prescriptions; and

e. Employee medical complaints.

2. "Employee medical record" does not include the following:

a. Physical specimens (e.g., blood or urine samples) which are routinely discarded as a part of normal medical practice;

b. Records concerning health insurance claims if maintained separately from the employer's medical program and its records, and not accessible to the employer by employee name or other direct personal identifier (e.g., social security number, payroll number, etc.);

c. Records created solely in preparation for litigation which are privileged from discovery under the applicable rules of procedure or evidence; or

d. Records concerning voluntary employee assistance programs (alcohol, drug abuse, or personal counseling programs) if maintained separately from the employer's medical program and its records.

L. "Establishment" means a single physical location where business is conducted or where services or industrial operations are performed. (For example: A factory, mill, store, hotel, restaurant, movie theater, farm, ranch, bank, sales office, warehouse, or central administrative office.) Where distinctly separate activities are performed at a single physical location (such as contract construction activities from the same physical location as a lumber yard), each activity shall be treated as a separate physical establishment, and separate notices shall be posted in each establishment to the extent that such notices have been furnished by UOSH.

M. "Exposure" or "exposed" means that an employee is subjected to a toxic substance or harmful physical agent in the course of employment through any route of entry (inhalation, ingestion, skin contact, absorption, etc.) and includes past exposure and potential (e.g., accidental or possible) exposure, but does not include situations where the employer can demonstrate that the toxic substance or harmful physical agent is not used, handled, stored, generated, or present in the workplace in any manner different from typical non-occupational situations.

N. "Hearing" means a proceeding conducted by the commission.

O. "Imminent danger" means a danger exists which reasonably could be expected to cause an occupational disease, death, or serious physical harm immediately, or before the danger could be eliminated through enforcement procedures under the Utah OSH Act.

P. "Inspection" means any inspection of an employer's factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer, and includes any inspection conducted pursuant to a complaint filed under UAC R614-1-6.K.1. and 3., any re-inspection, follow-up inspection, accident investigation or other inspection conducted under section 34A-6-301(1) of the Utah OSH Act.

Q. "OSHA" means the federal Occupational Safety and Health Administration (OSHA).

R. "Serious injury" -- refer to definition for "disabling, serious or significant injury."

S. "Standard" means an occupational health and safety standard or group of standards which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary to provide safety and healthful employment and places of employment.

T. "Toxic substance or harmful physical agent" means any chemical substance, biological agent (bacteria, virus, fungus, etc.) or physical stress (noise, heat, cold, vibration, repetitive motion, ionizing and non-ionizing radiation, hypo or hyperbaric pressure, etc.) which:

1. Is listed in the latest printed edition of the National Institute for Occupational Safety and Health (NIOSH) Registry of Toxic Effects of Chemical Substances (RTECS) which is incorporated by reference as specified in 29 CFR 1910.6;

2. Has yielded positive evidence of an acute or chronic health hazard in human, animal, or other biological testing conducted by, or known to the employer; or

3. Is the subject of a safety data sheet kept by or known to the employer indicating that the material may pose a hazard to human health.

U. "UAC" means Utah Administrative Code.

V. "UOSH" means the Utah Occupational Safety and Health Division within the Labor Commission.

W. "Utah OSH Act" means the Utah Occupational Safety and Health Act, Utah Code Ann. 34A-6-101 et seq., of 1973.

R614-1-4. Incorporation of Federal Standards.

A. The following federal occupational safety and health standards are hereby incorporated:

1. 29 CFR 1904, July 1, 2018, is incorporated by reference, except 29 CFR 1904.36 and the workplace fatality, injury and illness reporting requirements found in 29 CFR 1904.1, 1904.2, 1904.7 and 1904.39. Workplace fatalities, injuries and illnesses shall be reported pursuant to the more specific Utah standards in subsection 34A-6-301(3)(b)(ii) of the Utah OSH Act and UAC R614-1-5(B)(1).

2. 29 CFR 1908, July 1, 2015, is incorporated by reference.

3. 29 CFR 1910.6 and 1910.21 through the end of part 1910, of the July 1, 2018, edition are incorporated by reference.

4. 29 CFR 1926.6 and 1926.20 through the end of part 1926, of the July 1, 2018, edition are incorporated by reference.

R614-1-5. Adoption and Extension of Established Federal Safety Standards and State of Utah General Safety Orders.

A. Scope and Purpose.

1. The provisions of this rule adopt and extend the applicability of established Federal Safety Standards and UAC R614 with respect to every employer, employee and employment in the state of Utah, covered by the Utah OSH Act.

2. All standards and rules, including emergency and/or temporary, promulgated under the Williams-Steiger Occupational Safety and Health Act of 1970 (84 Stat. 1590 et seq., 29 U.S.C. 651 et seq.) shall be accepted as part of the standards, rules and regulations under the Utah OSH Act, unless specifically revoked or deleted.

B. Reporting Requirements.

1. Each employer shall within 8 hours of occurrence, notify UOSH of any work-related fatalities, of any disabling, serious, or significant injury and of any occupational disease incident. Call (801) 530-6901.

2. Tools, equipment, materials or other evidence that might pertain to the cause of such accident shall not be removed or destroyed until so authorized by UOSH or one of its CSHOs.

3. Each employer shall investigate or cause to be investigated all work-related injuries and occupational diseases and any sudden or unusual occurrence or change of conditions that pose an unsafe or unhealthful exposure to employees.

C. Employer and Employee Responsibility.

1. It shall be the duty and responsibility of any employee upon entering his or her place of employment, to examine carefully such working place and ascertain if the place is safe, if the tools and equipment can be used with safety, and if the work can be performed safely. After such examination, it shall be the duty of the employee to make the place, tools, or equipment safe. If this cannot be done, then it becomes his or her duty to immediately report the unsafe place, tools, equipment, or conditions to the foreman or supervisor.

2. Employees must comply with all safety rules of their employer and with all the rules and regulations promulgated by UOSH which are applicable to their type of employment.

3. Management shall inspect or designate a competent person or persons to inspect frequently for unsafe conditions and practices, defective equipment and materials, and where such conditions are found, it shall take appropriate action to correct such conditions immediately.

4. Management shall warn all employees of any dangerous condition and permit no one to work in an unsafe place, except for the purpose of making it safe.

5. Each employer shall instruct its employees in a language and vocabulary that the employees can understand. Employees shall only be assigned to duties or locations where they have the necessary skills and comprehension to work in a safe manner.

D. General Safety Requirements.

1. No person shall remove, displace, bypass, destroy, or carry away any safety devices or safeguards provided for use in any place of employment, or interfere in any way with the use thereof by other persons, or interfere in any method or process adopted for the protection of employees.

2. Where there is a risk of injury from hair entanglement in moving parts of machinery, employees shall confine their hair to eliminate the hazard.

3. Loose gloves, sleeves, tails, ties, lapels, cuffs, or similar garments which can become entangled in moving machinery shall not be worn where an entanglement hazard exists. Clothing saturated or impregnated with flammable liquids, corrosive substances, irritant, oxidizing agents or other toxic materials shall be removed and shall not be worn until properly cleaned.

4. Wrist watches, rings, or other jewelry shall not be worn on the job where they constitute a safety hazard.

5. Emergency Posting Required.

A list of telephone numbers or addresses as may be applicable shall be posted in a conspicuous place so the necessary help can be obtained in case of emergency. This list shall include:

a. Responsible supervision (superintendent or equivalent)

b. Doctor

c. Hospital

d. Ambulance

e. Fire Department

f. Sheriff or Police

6. Lockout and Tagout.

a. UOSH has incorporated, by reference, 29 CFR 1910.147, The Control of Hazardous Energy (Lockout/Tagout). See UAC R614-1-4.1.

b. The employee performing servicing or maintenance on machines or equipment required to be locked out under 29 CFR 1910.147 shall have exclusive control of the lockout device until the job is completed or such employee is relieved from the job, such as by shift change or other assignment.

7. Safety latch-type hooks shall be used wherever possible.

8. Grizzlies Over Chutes, Bins and Tank Openings.

a. Employees shall be provided with and use approved type safety harnesses and shall be tied off securely so as to be suspended above the level of the product before entering any bin, chute or storage place containing material that might cave or run. Cleaning and barring down in such places shall be started from the top using only bars blunt on one end or having a ring type or D handhold.

b. Employees shall not work on top of material stored or piled above chutes, drawholes or conveyor systems while material is being withdrawn unless protected.

c. Chutes, bins, drawholes and similar openings shall be equipped with grizzlies or other safety devices that will prevent employees from falling into the openings.

d. Bars for grizzly grids shall be so fitted that they will not loosen and slip out of place, and the operator shall not remove a bar temporarily to let large rocks through rather than to break them.

E. Process Safety Management.

All requirements of the process safety management (PSM) standard 29 CFR 1910.119 are hereby extended to include blister agents sulfur mustard (H, HD, HT), nitrogen mustard (HN-1, HN-2, HN-3), Lewisite (L) and halogenated oximes (CX) and the nerve agents tabun (GA), sarin (GB), soman (GD) and VX.

R614-1-6. Inspections, Citations, and Proposed Penalties.

A. The purpose of UAC R614-1-6 is to prescribe rules and general policies for enforcement of the inspection, citation, and proposed penalty provisions of the Utah OSH Act. Where UAC R614-1-6 sets forth general enforcement policies rather than substantive or procedural rules, such policies may be modified in specific circumstances where the administrator or its designee determines that an alternative course of action would better serve the objectives of the Utah OSH Act.

B. Posting of Notices; Availability of the Utah OSH Act, Regulations and Applicable Standards.

1. Each employer shall post and keep posted notices, to be furnished by UOSH, informing employees of the protections and obligations provided for in the Utah OSH Act, and that for assistance and information, including copies of the Utah OSH Act and of specific safety and health standards, employees should contact their employer or the UOSH office. Such notices shall be posted by the employer in each establishment in a conspicuous place where notices to employees are customarily posted. Each employer shall take steps to ensure that such notices are not altered, defaced, or covered by other material.

2. Where employers are engaged in activities which are physically dispersed, such as agriculture, construction, transportation communications, and electric, gas and sanitary services, the notices required shall be posted at the location where employees report each day. In the case of employees who do not usually work at, or report to, a single establishment, such as traveling salesmen, technicians, engineers, etc., such notices shall be posted in accordance with the requirements of UAC R614-1-6.Q.

3. Copies of the Utah OSH Act, all regulations published under authority of section 34A-6-202 of the Utah OSH Act and all

applicable standards will be available at the UOSH office. If an employer has obtained copies of these materials, it shall make them available upon request to any employee or its authorized representative.

4. Any employer failing to comply with the provisions of this rule shall be subject to citation and penalty in accordance with the provisions of sections 34A-6-302 and 34A-6-307 of the Utah OSH Act.

C. Authority for Inspection.

1. CSHOs are authorized to conduct inspections and investigations of any workplace covered under the Utah OSH Act, in accordance with subsection 34A-6-301(1) of the Utah OSH Act, and to review records required by the Utah OSH Act, regulations published in UAC R614, federal standards incorporated by UAC R614-1-4, and other records which are directly related to the purpose of the inspection.

2. Prior to inspecting areas containing information which has been classified by an agency of the United States Government in the interest of national security, CSHOs shall obtain the appropriate security clearance.

D. Objection to Inspection.

1. Upon a refusal to permit the CSHO in exercise of his or her official duties, to enter without delay and at reasonable times any place of employment or any place therein, to inspect, to review records, or to question any employer, owner, operator, agent, or employee, in accordance with UAC R614-1-6.C.1., or to permit a representative of employees to accompany the CSHO during the physical inspection of any workplace in accordance with UAC R614-1-6.H., the CSHO shall terminate the inspection or confine the inspection to other areas, conditions, structures, machines, apparatus, devices, equipment, materials, records or interviews concerning which no objection is raised.

2. The CSHO shall endeavor to ascertain the reason for such refusal, and shall immediately report the refusal and the reason therefor to the administrator. The administrator shall take appropriate action, including compulsory process, if necessary.

3. Compulsory process shall be sought in advance of an attempted inspection or investigation if, in the judgment of the administrator, circumstances exist which make such pre-inspection process desirable or necessary. Some examples of circumstances in which it may be desirable or necessary to seek compulsory process in advance of an attempt to inspect or investigate include, but are not limited to:

a. When the employer's past practice either implicitly or explicitly puts the administrator on notice that a warrantless inspection will not be allowed:

b. When an inspection is scheduled far from the UOSH office and procuring a warrant prior to leaving to conduct the inspection would avoid, in case of refusal of entry, the expenditure of significant time and resources to return to the office, obtain a warrant and return to the worksite;

c. When an inspection includes the use of special equipment or when the presence of an expert or experts is needed in order to properly conduct the inspection, and procuring a warrant prior to an attempt to inspect would alleviate the difficulties or costs encountered in coordinating the availability of such equipment or expert.

4. For purposes of this section, the term compulsory process shall mean the institution of any appropriate action, including ex parte application for an inspection warrant or its equivalent. Ex parte inspection warrants shall be the preferred form of compulsory process in all circumstances where compulsory process is relied upon to seek entry to a workplace under this section.

E. Entry not a Waiver.

Any permission to enter, inspect, review records, or question any person, shall not imply a waiver of any cause of action, citation, or penalty under the Utah OSH Act. CSHOs are not authorized to grant such waivers.

F. Advance Notice of Inspections.

1. Advance notice of inspections may not be given, except in the following situations:

a. In cases of apparent imminent danger, to enable the employer to abate the danger as quickly as possible;

b. In circumstances where the inspection can most effectively be conducted after regular business hours or where special preparations are necessary for an inspection;

c. Where necessary to assure the presence of representatives of the employer and employees or the appropriate personnel needed to aid the inspection; and

d. In other circumstances where the administrator determines that the giving of advance notice would enhance the probability of an effective and thorough inspection.

2. In the situations described in UAC R614-1-6.F.1., advance notice of inspections may be given only if authorized by the administrator, except that in cases of imminent danger, advance notice may be given by the CSHO without such authorization if the administrator is not immediately available. When advance notice is given, it shall be the employer's responsibility promptly to notify the authorized representative of employees of the inspection, if the identity of such representative is known to the employer. (See UAC R614-1-6.H.2. as to instances where there is no authorized representative of employees.) Upon the request of the employer, the CSHO will inform the authorized representative of employees of the inspection, provided that the employer furnishes the CSHO with the identity of such representative and with such other information as is necessary to enable the CSHO promptly to inform such representative of the inspection. An employer who fails to comply with its obligation under this paragraph promptly to inform the authorized representative of employees of the inspection or to furnish such information as is necessary to enable the CSHO promptly to inform such representative of the inspection, may be subject to citation and penalty under sections 34A-6-302 and 34A-6-307 of the Utah OSH Act. Advance notice in any of the situations described in UAC R614-1-6.F.1. shall not be given more than 24 hours before the inspection is scheduled to be conducted, except in cases of imminent danger situations and other unusual circumstances.

3. Subsection 34A-6-307(5)(b) of the Utah OSH Act provides for criminal penalties where any person gives advance notice of any inspection conducted under the Utah OSH Act without authority from the administrator or administrator's representatives.

G. Conduct of Inspections.

1. Subject to the provisions of UAC R614-1-6.C., inspections shall take place at such times and in such places of employment as the administrator or the CSHO may direct. At the beginning of an inspection, CSHOs shall present their credentials to the owner, operator, or agent in charge at the establishment; explain the nature and purpose of the inspection; and indicate generally the scope of the inspection and the records which they wish to review as specified in UAC R614-1-6.C.1. However, such designations of

records shall not preclude access to additional records that may be related to the purpose of the inspection.

2. CSHOs shall have authority to take environmental samples and to take or obtain photographs or video recordings related to the purpose of the inspection, employ other reasonable investigative techniques, and question privately any employer, owner, operator, agent or employee of an establishment. (See UAC R614-1-6.I. on trade secrets.) As used herein, the term "employ other reasonable investigative techniques" includes, but is not limited to, the use of devices to measure employee exposures and the attachment of personal sampling equipment such as dosimeters, pumps, badges, and other similar devices to employees in order to monitor their exposures.

3. In taking photographs and samples, CSHOs shall take reasonable precautions to ensure that such actions with flash, spark-producing, or other equipment will not be hazardous. CSHOs shall comply with all employer safety and health rules and practices at the establishment being inspected, and shall wear and use appropriate protective clothing and equipment.

4. The conduct of inspections shall preclude unreasonable disruption of operations of the employer's establishment.

5. At the conclusion of an inspection, the CSHO shall confer with the employer or its representative and informally advise such of any apparent safety or health violations disclosed by the inspection. During such conference, the employer shall be afforded an opportunity to bring to the attention of the CSHO any pertinent information regarding conditions in the workplace.

6. Inspections shall be conducted in accordance with the requirements of UAC R614-1-6.

H. Representative of Employers and Employees.

1. CSHOs shall be in charge of inspections and questioning of persons. A representative of the employer and a representative authorized by its employees shall be given an opportunity to accompany the CSHO during the physical inspection of any workplace for the purpose of aiding such inspection. A CSHO may permit additional employer representatives and additional representatives authorized by employees to accompany the CSHO where the CSHO determines that such additional representatives will further aid the inspection. A different employer and employee representative may accompany the CSHO during each phase of an inspection if this will not interfere with the conduct of the inspection.

2. CSHOs shall have authority to resolve all disputes as to who is the representative authorized by the employer and employees for the purpose of this rule. If there is no authorized representative of employees, or if the CSHO is unable to determine with reasonable certainty who is such representative, the CSHO shall consult with a reasonable number of employees concerning matters of safety and health in the workplace.

3. The representative(s) authorized by employees shall be an employee(s) of the employer. However, if in the judgment of the CSHO, good cause has been shown why accompaniment by a third party who is not an employee of the employer (such as an industrial hygienist or safety engineer) is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace, such third party may accompany the CSHO during the inspection.

4. CSHOs are authorized to deny the right of accompaniment under this rule to any person whose conduct interferes with a fair and orderly inspection. The right of accompaniment in areas containing trade secrets shall be subject to the provisions of UAC R614-1-6.I.3. With regard to information classified by an agency of the U.S. Government in the interest of national security, only persons authorized to have access to such information may accompany a CSHO in areas containing such information.

I. Trade secrets.

1. Section 34A-6-306 of the Utah OSH Act provides provisions for trade secrets.

2. At the commencement of an inspection, the employer may identify areas in the establishment which contain or which might reveal a trade secret. If the CSHO has no clear reason to question such identification, information obtained in such areas, including all negatives and prints of photographs, and environmental samples, shall be labeled "confidential-trade secret" and shall not be disclosed except in accordance with the provisions of section 34A-6-306 of the Utah OSH Act.

3. Upon the request of an employer, any authorized representative of employees under UAC R614-1-6.H. in an area containing trade secrets shall be an employee in that area or an employee authorized by the employer to enter that area. Where there is no such representative or employee, the CSHO shall consult with a reasonable number of employees who work in that area concerning matters of safety and health.

J. Consultation with Employees.

CSHOs may consult with employees concerning matters of occupational safety and health to the extent they deem necessary for the conduct of an effective and thorough inspection. During the course of an inspection, any employee who believes a violation of the Utah OSH Act exists in the workplace shall be afforded an opportunity to bring such violation to the attention of the CSHO.

K. Complaints by Employees.

1. Any employee or representative of employees who believes a violation of the Utah OSH Act exists in any workplace where such employee is employed may request an inspection of such workplace by giving notice of the alleged violation to the administrator or to a CSHO. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employee or representative of employees. A copy of the notice shall be provided to the employer or its agent by the administrator or CSHO no later than at the time of inspection, except that, upon the request of the person giving such notice, the person's name and the names of individual employees referred to therein shall not appear in such copy or on any record published, released, or made available by the administrator.

2. If upon receipt of such notification the administrator determines that the complaint meets the requirements set forth in UAC R614-1-6.K.1., and that there are reasonable grounds to believe that the alleged violation exists, the administrator shall cause an inspection to be made as soon as practicable. Inspections under this rule shall not be limited to matters referred to in the complaint.

3. Prior to or during any inspection of a workplace, any employee or representative of employees employed in such workplace may notify the CSHO, in writing, of any violation of the Utah OSH Act which they have reason to believe exists in such workplace. Any such notice shall comply with requirements of UAC R614-1-6.K.1.

L. Inspection not Warranted; Informal Review.

1. If the administrator determines an inspection is not warranted because there are no reasonable grounds to believe a violation or danger exists with respect to a complaint filed under UAC R614-1-6.K., the administrator shall notify the complaining party in writing of such determination. The complaining party may obtain

review of such determination by submitting a written statement of position with the administrator. The administrator, at its discretion, may hold an informal conference in which the complaining party and the employer may orally present their views. After considering all written and oral view presented, the administrator shall affirm, modify, or reverse the determination of the previous decision and again furnish the complaining party and the employer written notification of its decision and the reasons therefor.

2. If the administrator determines that an inspection is not warranted because the requirements of UAC R614-1-6.K.1. have not been met, the administrator shall notify the complaining party in writing of such determination. Such determination shall be without prejudice to the filing of a new complaint meeting the requirements of UAC R614-1-6.K.1.

M. Imminent Danger.

Section 34A-6-305 of the Utah OSH Act contains provisions for addressing imminent danger conditions and practices in any place of employment.

N. Citations.

1. The administrator shall review the inspection report of the CSHO. If, on the basis of the report the administrator believes the employer has violated a requirement of section 34A-6-201 of the Utah OSH Act, of any standard, rule, or order promulgated pursuant to section 34A-6-202 of the Utah OSH Act, or of any substantive rule published in this chapter, the administrator shall issue to the employer a citation. A citation shall be issued even though after being informed of an alleged violation by the CSHO, the employer immediately abates or initiates steps to abate such alleged violation. Any citation shall be issued with reasonable promptness after termination of the inspection. No citation may be issued after the expiration of 6 months following the occurrence of any violation.

2. Any citation shall describe with particularity the nature of the alleged violation, including a reference to the provision(s) of the Utah OSH Act, standard, rule, regulation, or order alleged to have been violated. Any citation shall also fix a reasonable time or times for the abatement of the alleged violations.

3. If a citation is issued for a violation alleged in a request for inspection under UAC R614-1-6.K.1. or a notification of violation under UAC R614-1-6.K.3., a copy of the citation shall be sent to the employee or representative of employees who made such request or notification.

4. Following an inspection, if the administrator determines a citation is not warranted with respect to a danger or violation alleged to exist in a request for inspection under UAC R614-1-6.K.1. or a notification of violation under UAC R614-1-6.K.3., the informal review procedures prescribed in UAC R614-1-6.L.1. shall be applicable. After considering all views presented, the administrator shall affirm the determination, order a re-inspection, or issue a citation if it believes the inspection disclosed a violation. The administrator shall furnish the complaining party and the employer with written notification of its determination and the reasons therefor.

5. Every citation shall state that the issuance of a citation does not constitute a finding that a violation of the Utah OSH Act has occurred unless there is a failure to contest as provided for in the Utah OSH Act or, if contested, unless the citation is affirmed by the commission.

O. Petitions for Modification of Abatement Date.

1. An employer may file a petition for modification of abatement date when it has made a good faith effort to comply with the abatement requirements of the citation, but such abatement has not been completed because of factors beyond its reasonable control.

2. A petition for modification of abatement date shall be in writing and shall include the following information:

a. All steps taken by the employer, and the dates of such action, in an effort to achieve compliance during the prescribed abatement period;

b. The specific additional abatement time necessary in order to achieve compliance;

c. The reasons such additional time is necessary, including the unavailability of professional or technical personnel or of materials and equipment, or because necessary construction or alteration of facilities cannot be completed by the original abatement date;

d. All available interim steps being taken to safeguard the employees against the cited hazard during the abatement period; and

e. A certification that a copy of the petition has been posted and, if appropriate, served on the authorized representative of affected employees, in accordance with UAC R614-1-6.O.3.a. and a certification of the date upon which such posting and service was made.

3. A petition for modification of abatement date shall be filed with the administrator no later than the close of the next working day following the date on which abatement was originally required. A later-filed petition shall be accompanied by the employer's statement of exceptional circumstances explaining the delay.

a. A copy of such petition shall be posted in a conspicuous place where all affected employees will have notice thereof or near such location where the violation occurred. The petition shall remain posted for a period of ten (10) working days. Where affected employees are represented by an authorized representative, said representative shall be served with a copy of such petition.

b. Affected employees or their representatives may file an objection in writing to such petition with the administrator. Failure to file such objection within ten (10) working days of the date of posting of such petition or of service upon an authorized representative shall constitute a waiver of any further right to object to said petition.

c. The administrator or its authorized representative shall have authority to approve any petition for modification of abatement date filed pursuant to paragraphs UAC R614-1-6.O.2. and 3. Such uncontested petitions shall become final orders pursuant to subsection 34A-6-303(1) of the Utah OSH Act.

d. The administrator or its authorized representative shall not exercise its approval power until the expiration of ten (10) working days from the date the petition was posted or served by the employer pursuant to UAC R614-1-6.O.3.a.

4. Where any petition is objected to by the affected employees, the petition, citation, and any objections shall be forwarded to the administrator per UAC R614-1-6.O.3.b.

P. Proposed Penalties.

1. After, or concurrent with, the issuance of a citation and within a reasonable time after the termination of the inspection, the administrator shall notify the employer by certified mail or by personal service of the proposed penalty under section 34A-6-307 of the Utah OSH Act, or that no penalty is being proposed. Any notice of proposed penalty shall state that the proposed penalty shall be deemed to be the final order of the commission and not subject to review by any court or agency unless, within 30 days from the date of receipt of such notice, the employer notifies the Adjudication Division (Adjudication) within the commission in writing that it intends to

contest the citation or the notification of proposed penalty before the commission.

2. The administrator shall determine the amount of any proposed penalty, giving due consideration to the appropriateness of the penalty with respect to the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations, in accordance with the provisions of section 34A-6-307 of the Utah OSH Act.

3. Appropriate penalties may be proposed with respect to an alleged violation even though after being informed of such alleged violation by the CSHO, the employer immediately abates, or initiates steps to abate, such alleged violation. Penalties shall not be proposed for violations which have no direct or immediate relationship to safety or health.

Q. Posting of Citations.

1. Upon receipt of any citation under the Utah OSH Act, the employer shall immediately post such citation, or copy thereof, unedited, at or near each place an alleged violation referred to in the citation occurred, except as hereinafter provided. Where, because of the nature of the employer's operations, it is not practicable to post the citation at or near each place of alleged violation, such citation shall be posted, unedited, in a prominent place where it will be readily observable by all affected employees. For example, where employees are engaged in activities which are physically dispersed (see UAC R614-1-6.B.2.), the citation may be posted at the location to which employees report each day. Where employees do not primarily work at or report to a single location, the citation must be posted at the location from which the employees commence their activities. The employer shall take steps to ensure that the citation is not altered, defaced, or covered by other material.

2. Each citation, or a copy thereof, shall remain posted until the violation has been abated, or for 3 working days, whichever is later. The filing by the employer of a notice of intention to contest under UAC R614-1-6.R. shall not affect its posting responsibility unless and until the commission issues a final order vacating the citation.

3. An employer to whom a citation has been issued may post a notice in the same location where such citation is posted indicating that the citation is being contested before the commission, and such notice may explain the reasons for such contest. The employer may also indicate that specified steps have been taken to abate the violation.

4. Any employer failing to comply with the provisions of UAC R614-1-6.Q.1. and 2. shall be subject to citation and penalty in accordance with the provisions of section 34A-6-307 of the Utah OSH Act.

R. Employer and Employee Contests before the Commission.

1. Any employer to whom a citation or notice of proposed penalty has been issued, may under section 34A-6-303 of the Utah OSH Act, notify Adjudication in writing that the employer intends to contest such citation or proposed penalty before the commission. Such notice of intention to contest must be received by Adjudication within 30 days of the receipt by the employer of the citation and notice of proposed penalty. Every notice of intention to contest shall specify whether it is directed to the citation or to the proposed penalty, or both. Adjudication shall handle such notice in accordance with the rules of procedures prescribed by the commission.

2. An employee or representative of employee of an employer to whom a citation has been issued may, under section 34A-6-303(3) of the Utah OSH Act, file a written notice with Adjudication alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable. Such notice must be received by Adjudication within 30 days of the issuance of the citation by UOSH. Adjudication shall handle such notice in accordance with the rules of procedure prescribed by the commission.

S. Failure to Correct a Violation for which a Citation has been Issued.

1. If an inspection discloses that an employer has failed to correct an alleged violation for which a citation has been issued within the period permitted for its correction, the administrator shall notify the employer by certified mail or by personal service by the CSHO of such failure and of the additional penalty proposed under section 34A-6-307 of the Utah OSH Act by reason of such failure. The period for the correction of a violation for which a citation has been issued shall not begin to run until the entry of a final order of the commission in the case of any review proceedings initiated by the employer in good faith and not solely for delay or avoidance of penalties.

2. Any employer receiving a notification of failure to correct a violation and of proposed additional penalty may, under section 34A-6-303(3) of the Utah OSH Act, notify Adjudication in writing that it intends to contest such notification or proposed additional penalty before the commission. Such notice of intention to contest shall be received by Adjudication within 30 days of receipt by the employer of the notification of failure to correct a violation and of proposed additional penalty. Adjudication shall handle such notice in accordance with the rules of procedures prescribed by the commission.

3. Each notification of failure to correct a violation and of proposed additional penalty shall state that it shall be deemed to be the final order of the commission and not subject to review by any court or agency unless, within 30 days from the date of receipt of such notification, the employer notifies Adjudication in writing that it intends to contest the notification or the proposed additional penalty before the commission.

T. Informal Conferences.

At the request of an affected employer, employee, or representative of employees, the administrator may hold an informal conference for the purpose of discussing any issues raised by an inspection, citation, notice of proposed penalty, or notice of intention to contest. The administrator shall provide in writing the reasons for any settlement of issues at such conferences. If the conference is requested by the employer, an affected employee or employee representative shall be afforded an opportunity to participate, at the discretion of the administrator. If the conference is requested by an employee or representative of employees, the employer shall be afforded an opportunity to participate, at the discretion of the administrator. Any party may be represented by counsel at such conference. No such conference or request for such conference shall operate as a stay of any 30-day period for filing a notice of intention to contest as prescribed in UAC R614-1-6.R.

U. Multi-Employer Worksites.

1. Pursuant to section 34A-6-201 of the Utah OSH Act, violation of an applicable standard adopted under section 34A-6-202 of the Utah OSH Act at a multi-employer worksite may result in a citation issued to more than one employer.

2. An employer on a multi-employer worksite may be considered a creating, exposing, correcting, or controlling employer. An employer may be cited should:

a. It meet the definition of a creating employer and be found to have failed to exercise the duty of care required by this rule for a creating employer: or

b. It meet the definition of an exposing, correcting, or controlling employer and be found to have failed to exercise the duty of care required by this rule for that category of employer.

c. Even if an employer meets its duty of reasonable care applicable to one category of employer, it may still be cited should it meet the definition of another category of employer and be found to have failed to exercise the duty of care required by this rule for that category of employer. No employer will be cited for the same violation under multiple categories of employers.

3. Creating Employer. A creating employer is one that created a hazardous condition on the worksite. A creating employer may be cited if:

a. Its own employees are exposed or if the employees of another employer at the site are exposed to this hazard; and

b. The employer did not exercise reasonable care by taking prompt and effective steps to alert employees of other employers of the hazard and to correct or remove the hazard or, if the creating employer does not have the ability or authority to correct or remove the hazard, to notify the controlling or correcting employer of the hazard.

4. Exposing Employer. An exposing employer is one that exposed its own employees to a hazard. If the exposing employer created the hazard, it is citable as the creating employer, not the exposing employer.

a. If the exposing employer did not create the hazard, it may be cited as the exposing employer if:

i. It knew of the hazard or failed to exercise reasonable care to discover the hazard; and

ii. Upon obtaining knowledge of the hazard, it failed to take prompt and reasonable precautions, consistent with its authority on the worksite, to protect its employees.

b. An exposing employer will be deemed to have exercised reasonable care to discover a hazard if it demonstrates that it has regularly and diligently inspected the worksite.

c. If the exposing employer has the authority to correct or remove the hazard, it must correct or remove the hazard with reasonable diligence. If the exposing employer lacks such authority, it may still be cited if:

i. It failed to make a good faith effort to ask the creating and/or controlling employer to correct the hazard;

ii. It failed to inform its employees of the hazard; and

iii. It failed to take reasonable alternative measures, consistent with its authority on the worksite, to protect its employees.

5. Correcting Employer. A correcting employer is one responsible for correcting a hazardous condition, such as installing or maintaining safety and health devices or equipment, or implementing appropriate health and safety procedures. A correcting employer must exercise reasonable care in preventing and discovering hazards and ensure such hazards are corrected in a prompt manner, which shall be determined in light of the scale, nature and pace of the work, and the amount of activity of the worksite.

6. Controlling Employer. A controlling employer is one with general supervisory authority over a worksite. This authority may be established either through contract or practice and includes the authority to correct safety and health violations or require others to do so, but it is separate from the responsibilities and care to be exercised by a correcting employer.

a. A controlling employer will not be cited if it has exercised reasonable care to prevent and detect violations on the worksite. The extent of the measures used by a controlling employer to satisfy this duty, however, is less than the extent required of an employer when protecting its own employees. A controlling employer is not required to inspect for hazards or violations as frequently or to demonstrate the same knowledge of applicable standards or specific trade expertise as the employer under its control.

b. When determining the duty of reasonable care applicable to a controlling employer on a multi-employer worksite, the factors that may be considered include, but are not limited to:

i. The nature of the worksite and industry in which the work is being performed;

ii. The scale, nature and pace of the work, including the pace and frequency at which the worksite hazards change as the work progresses;

iii. The amount of activity at the worksite, including the number of employers under its control and the number of employees working on the worksite;

iv. The implementation and monitoring of safety and health precautions for the entire worksite requiring that other employers on the worksite comply with their respective obligations and standards of care for the safety of employees, a graduated system of discipline for non-compliant employees and/or employers, regular worksite safety meetings, and when appropriate for atypical hazards, the providing of adequate safety training by employers for atypical hazards present on the worksite; and

v. The frequency of worksite inspections, particularly at the commencement of a project or the commencement of work on the project by other employers that come under its control. As work progresses, the frequency and sufficiency of such inspections shall be determined in relation to other employers' compliance with their respective obligations and standards of care as required by this rule.

c. When evaluating whether a controlling employer has demonstrated reasonable care in preventing and discovering violations, the following factors, though not inclusive, shall be considered;

i. Whether the controlling employer conducted worksite inspections with sufficient frequency as contemplated by subsection 6(b);

ii. The controlling employer's implementation and monitoring of an effective system for identifying a hazardous condition and promptly notifying employers under its control of the hazard so as to ensure compliance with their respective duties of care under this Rule;

iii. Whether the controlling employer implements a graduated system of discipline for non-compliant employees and/or employers with their respective safety and health requirements;

iv. Whether the controlling employer performs follow-up inspections to ensure hazards are corrected; and

v. Other actions demonstrating the implementation and monitoring of safety and health precautions for the entire worksite.

7. In accordance with section 34A-6-110 of the Utah OSH Act, nothing in this rule shall be:

a. Deemed to limit or repeal requirements imposed by statute or otherwise recognized by law; or

b. Construed or held to supersede or in any manner affect workers' compensation or enlarge or diminish or affect the common-law or statutory rights, duties, or liabilities of employers and employees under any law with respect to injuries, occupational or

other diseases, or death of employees arising out of, or in the course of employment.

R614-1-7. Recording and Reporting Occupational Injuries and Illnesses.

A. UOSH has incorporated, by reference, 29 CFR 1904, Recording and Reporting Occupational Injuries and Illnesses, with a few exceptions. Refer to UAC R614-1-4.A.1.

B. Regardless of size or type of operation, accidents and fatalities must be reported to UOSH in accordance with the requirements of UAC R614-1-5.B.

C. Equivalent Form for OSHA 301 Injury and Illness Report Form (OSHA 301 form).

For Employers Required to keep OSHA Injury and Illness Logs, Employer's First Report of Injury or Illness form (Utah Industrial Accidents Form 122), workers' compensation, insurance, or other reports may be used as an equivalent form for the OSHA 301 form if it contains the same information, is readable and understandable, and is completed using the same instructions as the OSHA 301 form it replaces.

D. Statistical Program.

1. Section 34A-6-108 of the Utah OSH Act directs the division to develop and maintain a program of collection, compilation, and analysis of occupational safety and health statistics. The program shall consist of periodic surveys of occupational injuries and illnesses.

2. The sample design encompasses probability procedures, detailed stratification by industry and size, and a systematic selection within stratification. Stratification and sampling will be carried out in order to provide the most efficient sample for eventual state estimates. Some industries will be sampled more heavily than others depending on the injury rate level based on previous experience. The survey should produce adequate estimates using the North American Industry Classification System (NAICS) where each industry sector and subsector is placed into the appropriate group of either goods-producing industries or service-providing industries. Full cooperation with the United States Department of Labor in statistical programs is intended.

R614-1-8. Rules of Practice for Temporary or Permanent Variance from the Utah Occupational Safety and Health Standards.

A. Scope.

This rule contains rules of practice for administrative procedures to grant variances and other relief under section 34A-6-202 of the Utah OSH Act. General information pertaining to employer-employee rights, obligations and procedures are included.

B. Application for, or Petition against Variances and Other Relief.

1. The applicable parts of section 34A-6-202 of the Utah OSH Act shall govern application and petition procedure.

2. Temporary variance.

a. Any employer or class of employers desiring a temporary variance from a standard, or portion thereof, authorized by subsection 34A-6-202(2)(c) of the Utah OSH Act must file a written application with the administrator which shall include the following information:

(1) The name and address of applicant;

(2) The address of the place or places of employment involved;

(3) A specification of the standard or portion thereof from which the applicant seeks a variance;

(4) A representation by the applicant, supported by representations from qualified persons having first-hand knowledge of the facts represented, that the applicant is unable to comply with the standard or portion thereof by its effective date and a detailed statement of the reasons therefor;

(5) A statement of the steps the applicant has taken and will take, with specific dates where appropriate, to protect employees against the hazard covered by the standard;

(6) A statement of when the applicant expects to be able to comply with the standard and of what steps it has taken and will take, with specific dates where appropriate, to come into compliance with the standard;

(7) A statement of the facts the applicant would show to establish that

i. The applicant is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date;

ii. The applicant is taking all available steps to safeguard its employees against the hazards covered by the standard; and

iii. The applicant has an effective program for coming into compliance with the standard as quickly as practicable;

(8) Any request for a hearing, as provided in this rule;

(9) A statement that the applicant has informed its affected employees of the application by giving a copy thereof to their authorized representative, posting a statement, which gives a summary of the application and specifying where a copy may be examined, at the place or places where notices to employees are normally posted, and by other appropriate means; and

(10) A description of how affected employees have been informed of the application and their right to petition the administrator for a hearing.

b. A temporary order may be granted only after notice to employees and an opportunity for a public hearing; provided, the administrator may issue one interim order effective until a decision is made, formally granting or denying a temporary variance, after public hearing.

(1) The purpose of an interim order is to permit an employer to proceed in a non-standard operation while administrative procedures are being completed. Use of this interim procedure is dependent upon need and employee safety.

(2) After determination and assurance that employees are to be adequately protected, the administrator may immediately grant, in writing, an interim order. To expedite the effect of the interim order, it may be issued at the worksite by the administrator.

3. Permanent variance.

a. Any employer desiring a permanent variance of a standard issued under section 34A-6-202 of the Utah OSH Act must apply to the division for a rule or order for such variance. The written application must include the following information:

(1) The name and address of applicant;

(2) The address of the place or places of employment involved;

(3) A description of the conditions, practices, means, methods, operations, or processes used or proposed to be used by the applicant;

(4) A statement showing how the conditions, practices, means, methods, operations, or processes used or proposed to be used would provide employment and places of employment to employees which are as safe and healthful as those required by the standard from which a variance is sought;

(5) The methods it will use to safeguard its employees until a variance is granted or denied;

(6) A certification that the applicant has informed its employees of the application by

i. Giving a copy thereof to their authorized representative;

ii. Posting a statement giving a summary of the application and specifying where a copy may be examined, at the place or places where notices to employees are normally posted (or in lieu of such summary, the posting of the application itself); and

iii. By other appropriate means;

(7) Any request for a hearing, as provided in this rule; and

(8) A description of how employees have been informed of the application and their right to petition the administrator for a hearing.

4. Whenever a proceeding on a citation or a related issue concerning a proposed penalty or period of abatement has been contested and is pending before an administrative law judge or any subsequent review under the Administrative Procedures Act, until the completion of such proceeding, the administrator may deny a variance application on a subject or an issue concerning a citation which has been issued to the employer.

C. Hearings.

1. The administrator may conduct hearings upon application or petition in accordance with section 34A-6-202(4) of the Utah OSH Act if:

a. Employee(s), the public, or other interested groups petition for a hearing; or

b. The administrator deems it in the public or employee interest.

2. When a hearing is considered appropriate, the administrator shall set the date, time, and place for such hearing and shall provide timely notification to the applicant and the petitioners. In the notice of hearing to the applicant, the applicant will be directed to notify its employees of the hearing.

3. Notice of hearings for proposed rules under section 34A-6-202(4) of the Utah OSH Act shall be published in the Utah State Bulletin. This shall include a statement that the application request may be inspected at the UOSH Office.

4. A copy of the Notice of Hearing, along with other pertinent information, shall be sent to the regional administrator for the federal Occupational Safety and Health Administration (OSHA).

D. Inspection for Variance Application.

1. A variance inspection may be required by the administrator or its designee prior to final determination of either acceptance or denial of a temporary or permanent variance.

2. A variance inspection is a single purpose, pre-announced, non-compliance inspection and shall include employee or employer representative participation or interviews where necessary.

E. Defective Applications.

1. If an application for variance does not meet the requirements of UAC R614-1-8.B., the administrator may deny the application.

2. Prompt notice of the denial of an application shall be given to the applicant.

3. The notice of denial shall include, or be accompanied by, a brief statement of the grounds for denial.

4. A denial of an application pursuant to this paragraph shall be without prejudice to the filing of another application.

5. A copy of the notice of denial shall be sent to the regional administrator for OSHA.

F. Adequate Applications.

1. The administrator may grant the request for variance provided that:

a. Data supplied by the applicant, the UOSH variance inspection, as applicable, and information and testimony affords adequate protection for the affected employee(s);

b. Notification of approval shall follow the pattern described in UAC R614-1-9.C.2. and 3.;

c. Limitations, restrictions, or requirements which become part of the variance shall be documented in the letter granting the variance.

2. The administrator's decision shall be deemed final subject to section 34A-6-202(6) of the Utah OSH Act.

G. Public Notice of a Granted Variance, Limitation, Variation, Tolerance or Exemption.

1. This paragraph does not apply to orders issued under section 34A-6-202 of the Utah OSH Act.

2. Final actions granting a variance, limitation, variation, tolerance or exemption under this rule shall be published in the Utah State Bulletin pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act. Every such final action shall specify the alternative to the standard involved which the particular variance permits.

H. Acceptance of Federally Granted Variances.

1. Where a variance has been granted by OSHA, following federal promulgation procedures, the administrator shall take the following action:

a. Compare the federal OSHA standard for which the variance was granted with the equivalent UOSH standard.

b. Identify possible application in Utah.

c. If the UOSH standard under consideration for application of the variance has exactly or essentially the same intent as the federal standard and there is the probability of a multi-state employer doing business in Utah, then the administrator shall accept the variance and promulgate it for Utah under the provisions of Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

d. If the variance has no apparent application to Utah industry, or to a multi-state employer in Utah, or if it conflicts with Utah legislative intent, or established policy or procedure, the federal variance shall not be accepted. In such case, the regional administrator for OSHA will be so notified.

I. Revocation of a Variance.

1. Any variance (temporary or permanent), whether approved by UOSH or accepted by UOSH based on federal approval, may be revoked by the administrator if it is determined through on-site inspection that:

a. The employer is not complying with provisions of the variance as granted;

b. Adequate employee safety is not afforded by the original provisions of the variance; or

c. A more stringent standard has been promulgated, is in force, and conflicts with prior considerations given for employee safety.

2. A federally approved national variance may be revoked by UOSH for a specific worksite or place of employment within Utah for reasons cited in UAC R614-1-8.I.1. Such revocations must be in writing and give full particulars and reasons prompting the action. Full rights provided under the law, such as hearings, etc., must be afforded the employer.

3. Permanent variances may be revoked or changed only after being in effect for at least six months.

J. Coordination.

All variances issued by the administrator will be coordinated with OSHA to ensure consistency and avoid improper unilateral action.

R614-1-9. Retaliation.

A. Section 34A-6-203 of the Utah OSH Act provides protection for employees who engage in protected activities under or related to the Utah OSH Act.

B. Engagement in Protected Activity.

To establish a violation of Section 34A-6-203, the employee's engagement in protected activity need not be the sole consideration behind discharge or other adverse action. If protected activity was a substantial reason for the action, or if the discharge or other adverse action would not have taken place "but for" engagement in protected activity, Section 34A-6-203 has been violated.

C. Notification of Division's Findings.

Within 90 days of receipt of a whistleblower complaint, the division is to issue to the complainant and the respondent an order of the division's findings of whether a violation has or has not occurred, in accordance with section 34A-6-203(2)(c) of the Utah OSH Act. This 90-day provision is considered directory in nature whereas there may be instances when it is not possible to meet the directory period set forth in this rule.

D. Employee Refusal to Comply with Safety Rules.

Employees who refuse to comply with occupational safety and health standards or valid safety rules implemented by the employer in furtherance of the Utah OSH Act are not exercising any rights afforded by the Utah OSH Act. Disciplinary measures taken by employers solely in response to employee refusal to comply with appropriate safety rules and regulations will not ordinarily be regarded as retaliatory action prohibited by section 34A-6-203 of the Utah OSH Act.

R614-1-10. Rules of Agency Practice and Procedure Concerning UOSH Access to Employee Medical Records.

A. Policy.

UOSH access to employee medical records will in certain circumstances be important to the agency's performance of its statutory functions. Medical records, however, contain personal details concerning the lives of employees. Due to the substantial personal privacy interests involved, UOSH authority to gain access to personally identifiable employee medical information will be exercised only after the agency has made a careful determination of its need for this information and only with appropriate safeguards to protect individual privacy. Once this information is obtained, UOSH examination and use of it will be limited to only that information needed to accomplish the purpose for access. Personally identifiable employee medical information will be retained by UOSH only for so long as needed to accomplish the purpose for access, will be kept secure while being used, and will not be disclosed to other agencies or members of the public except in narrowly defined circumstances. This section establishes procedures to implement these policies.

B. Scope and Application.

1. Except as provided in paragraphs B.6. through 10. below, this rule applies to all requests by UOSH personnel to obtain access to records in order to examine or copy personally identifiable employee medical information, whether or not pursuant to the access provision of 29 CFR 1910.1020(e).

2. For the purpose of this rule, "employer" means a current employer, a former employer, or a successor employer.

3. For the purposes of this rule, "personally identifiable employee medical information" means employee medical information accompanied by either direct identifiers (name, address, social security number, payroll number, etc.) or by information which could reasonably be used in the particular circumstances indirectly to identify specific employees (e.g., exact age, height, weight, race, sex, date of initial employment, job title, etc.).

4. For the purpose of this rule, "record" means any item, collection, or grouping of information regardless of the form or process by which it is maintained (e.g., paper document, electronic document, microfiche, microfilm, X-ray film, or automated data processing).

5. Specific written consent.

a. For the purpose of this rule, "specific written consent" means written authorization containing the following:

(1) The name and signature of the employee authorizing the release of medical information;

(2) The date of the written authorization;

(3) The name of the individual or organization that is authorized to release the medical information;

(4) The name of the designated representative (individual or organization) that is authorized to receive the released information;

(5) A general description of the medical information that is authorized to be released;

(6) A general description of the purpose for the release of medical information; and

(7) A date or condition upon which the written authorization will expire (if less than one year).

b. A written authorization does not operate to authorize the release of medical information not in existence on the date of written authorization, unless this is expressly authorized, and does not operate for more than one year from the date of written authorization.

c. A written authorization may be revoked in writing at any time.

6. This rule does not apply to UOSH access to, or the use of, aggregate employee medical information or medical records on individual employees which is not in a personally identifiable form.

7. This rule does not apply to records required by 29 CFR 1904, to death certificates, or to employee exposure records, including biological monitoring records, as defined by 29 CFR 1910.1020(c)(5), or by specific occupational safety and health standards as exposure records.

8. This rule does not apply where CSHOs conduct an examination of employee medical records solely to verify employer compliance with the medical surveillance recordkeeping requirements of an occupational safety and health standard, or with 29 CFR 1910.1020. An examination of this nature shall be conducted on-site and, if requested, shall be conducted under the observation of the record holder. CSHOs shall not record and take off-site any

information from medical records other than documentation of the fact of compliance or non-compliance.

9. This rule does not apply to agency access to, or the use of, personally identifiable employee medical information obtained in the course of litigation.

10. This rule does not apply where a written directive by the administrator authorizes appropriately qualified personnel to conduct limited reviews of specific medical information mandated by an occupational safety and health standard, or of specific biological monitoring test results.

11. Even if not covered by the terms of this rule, all medically related information reported in a personally identifiable form shall be handled with appropriate discretion and care befitting all information concerning specific employees. There may, for example, be personal privacy interests involved which militate against disclosure of this kind of information to the public.

C. Responsible Persons.

1. Administrator. The administrator shall be responsible for the overall administration and implementation of the procedures contained in this rule, including making final UOSH determinations concerning:

a. Access to personally identifiable employee medical information, and

b. Inter-agency transfer or public disclosure of personally identifiable employee medical information.

2. UOSH medical records officer. The administrator shall designate a UOSH official with experience or training in the evaluation, use, and privacy protection of medical records to be the UOSH medical records officer. The UOSH medical records officer shall report directly to the administrator on matters concerning this section and shall be responsible for:

a. Making recommendations to the administrator as to the approval or denial of written access orders;

b. Assuring that written access orders meet the requirements of paragraphs D.2. and 3. of this rule;

c. Responding to employee, collective bargaining agent, and employer objections concerning written access orders;

d. Regulating the use of direct personal identifiers;

e. Regulating internal agency use and security of personally identifiable employee medical information;

f. Assuring that the results of agency analyses of personally identifiable medical information are, where appropriate, communicated to employees;

g. Preparing an annual report of UOSH's experience under this rule; and

h. Assuring that advance notice is given of intended inter-agency transfers or public disclosures.

3. Principal UOSH investigator. The principal UOSH investigator shall be the UOSH employee in each instance of access to personally identifiable employee medical information who is made primarily responsible for assuring that the examination and use of this information is performed in the manner prescribed by a written access order and the requirements of this section. When access is pursuant to a written access order, the principal UOSH investigator shall be professionally trained in medicine, public health, or allied fields (epidemiology, toxicology, industrial hygiene, biostatistics, environmental health, etc.).

D. Written Access Orders.

1. Requirement for written access order. Except as provided in paragraph D.4. below, each request by a UOSH representative to examine or copy personally identifiable employee medical information contained in a record held by an employer or other record holder shall be made pursuant to a written access order which has been approved by the administrator upon the recommendation of the UOSH medical records officer. If deemed appropriate, a written access order may constitute, or be accompanied by an administrative subpoena.

2. Approval criteria for written access order. Before approving a written access order, the administrator and the UOSH medical records officer shall determine that:

a. The medical information to be examined or copied is relevant to a statutory purpose and there is a need to gain access to this personally identifiable information;

b. The personally identifiable medical information to be examined or copied is limited to only that information needed to accomplish the purpose for access; and

c. The personnel authorized to review and analyze the personally identifiable medical information are limited to those who have a need for access and have appropriate professional qualifications.

3. Content of written access order. Each written access order shall state with reasonable particularity:

a. The statutory purposes for which access is sought;

b. A general description of the kind of employee medical information that will be examined and why there is a need to examine personally identifiable information;

c. Whether medical information will be examined on-site, and what type of information will be copied and removed off-site;

d. The name, address, and phone number of the principal UOSH investigator and the names of any other authorized persons who are expected to review and analyze the medical information;

e. The name, address, and phone number of the UOSH medical records officer; and

f. The anticipated period of time during which UOSH expects to retain the employee medical information in a personally identifiable form.

4. Special situations. Written access orders need not be obtained to examine or copy personally identifiable employee medical information under the following circumstances:

a. Specific written consent. If specific written consent of an employee is obtained pursuant to 29 CFR 1910.1020(e)(2)(ii), and the agency or an agency employee is listed on the authorization as the designated representative to receive the medical information, then a written access order need not be obtained. Whenever personally identifiable employee medical information is obtained through specific written consent and taken off-site, a principal UOSH investigator shall be promptly named to assure protection of the information, and the UOSH medical records officer shall be notified of this person's identity. The personally identifiable medical information obtained shall thereafter be subject to the use and security requirements of paragraphs UAC R614-1-10.H. and I.

b. Physician consultations. A written access order need not be obtained where a UOSH staff or contract physician consults with an employer's physician concerning an occupational safety or health issue. In a situation of this nature, the UOSH physician may conduct on-site evaluation of employee medical records in consultation with the employer's physician, and may make necessary personal notes of

his or her findings. No employee medical records however, shall be taken off-site in the absence of a written access order or the specific written consent of an employee, and no notes of personally identifiable employee medical information made by the UOSH physician shall leave his or her control without the permission of the UOSH medical records officer.

E. Presentation of Written Access Order and Notice to Employees.

1. The principal UOSH investigator, or someone under his or her supervision, shall present at least two (2) copies each of the written access order and an accompanying cover letter to the employer prior to examining or obtaining medical information subject to a written access order. At least one copy of the written access order shall not identify specific employees by direct personal identifier. The accompanying cover letter shall summarize the requirements of this section and indicate that questions or objections concerning the written access order may be directed to the principal UOSH investigator or to the UOSH medical records officer.

2. The principal UOSH investigator shall promptly present a copy of the written access order (which does not identify specific employees by direct personal identifier) and its accompanying cover letter to each collective bargaining agent representing employees whose medical records are subject to the written access order.

3. The principal UOSH investigator shall indicate that the employer must promptly post a copy of the written access order which does not identify specific employees by direct personal identifier, as well as post its accompanying cover letter.

4. The principal UOSH investigator shall discuss with any collective bargaining agent and with the employer the appropriateness of individual notice to employees affected by the written access order. Where it is agreed that individual notice is appropriate, the principal UOSH investigator shall promptly provide to the employer an adequate number of copies of the written access order (which does not identify specific employees by direct personal identifier) and its accompanying cover letter to enable the employer either to individually notify each employee or to place a copy in each employee's medical file.

F. Objections Concerning a Written Access Order. All employees, collective bargaining agents, and employer written objections concerning access to records pursuant to a written access order shall be transmitted to the UOSH medical records officer. Unless the agency decides otherwise, access to the record shall proceed without delay notwithstanding the lodging of an objection. The UOSH medical records officer shall respond in writing to each employee's and collective bargaining agent's written objection to UOSH access. Where appropriate, the UOSH medical records officer may revoke a written access order and direct that any medical information obtained by it be returned to the original record holder or destroyed. The principal UOSH investigator shall assure that such instructions by the UOSH medical records officer are promptly implemented.

G. Removal of Direct Personal Identifiers. Whenever employees' medical information obtained pursuant to a written access order is taken off-site with direct personal identifiers included, the principal UOSH investigator shall, unless otherwise authorized by the UOSH medical records officer, promptly separate all direct personal identifiers from the medical information, and code the medical information and the list of direct identifiers with a unique identifying number of each employee. The medical information with its numerical code shall thereafter be used and kept secured as though still in a directly identifiable form. The principal UOSH investigator shall also hand deliver or mail the list of direct personal identifiers with their corresponding numerical codes to the UOSH medical records officer. The UOSH medical records officer shall thereafter limit the use and distribution of the list of coded identifiers to those with a need to know its contents.

H. Internal Agency Use of Personally Identifiable Employee Medical Information.

1. The principal UOSH investigator shall in each instance of access be primarily responsible for assuring that personally identifiable employee medical information is used and kept secured in accordance with this section.

2. The principal UOSH investigator, the UOSH medical records officer, the administrator, and any other authorized person listed on a written access order may permit the examination or use of personally identifiable employee medical information by agency employees and contractors who have a need for access, and appropriate qualifications for the purpose for which they are using the information. No UOSH employee or contractor is authorized to examine or otherwise use personally identifiable employee medical information unless so permitted.

3. Where a need exists, access to personally identifiable employee medical information may be provided to attorneys in the Utah Office of the Attorney General (AG's Office), and to agency contractors who are physicians or who have contractually agreed to abide by the requirements of this section and implementing agency directives and instructions.

4. UOSH employees and contractors are only authorized to use personally identifiable employee medical information for the purposes for which it was obtained, unless the specific written consent of the employee is obtained as to a secondary purpose, or the procedures of UAC R614-1-10.D. through G. are repeated with respect to the secondary purpose.

5. Whenever practicable, the examination of personally identifiable employee medical information shall be performed on-site with a minimum of medical information taken off-site in a personally identifiable form.

I. Security Procedures.

1. Agency files containing personally identifiable employee medical information shall be segregated from other agency files. When not in active use, files containing this information shall be kept secured in a locked cabinet or vault.

2. The UOSH medical records officer and the principal UOSH investigator shall each maintain a log of uses and transfers of personally identifiable employee medical information and lists of coded direct personal identifiers, except as to necessary uses by staff under their direct personal supervision.

3. The photocopying or other duplication of personally identifiable employee medical information shall be kept to the minimum necessary to accomplish the purposes for which the information was obtained.

4. The protective measures established by this rule apply to all worksheets, duplicate copies, or other agency documents containing personally identifiable employee medical information.

5. Intra-agency transfers of personally identifiable employee medical information shall be by hand delivery, United States mail, or equally protective means. Inter-office mailing channels shall not be used.

J. Retention and Destruction of Records.

1. Consistent with UOSH records disposition programs, personally identifiable employee medical information and lists of coded direct personal identifiers shall be destroyed or returned to the original record holder when no longer needed for the purposes for which they were obtained.

2. Personally identifiable employee medical information which is currently not being used actively but may be needed for future use shall be transferred to the UOSH medical records officer. The UOSH medical records officer shall conduct an annual review of all centrally-held information to determine which information is no longer needed for the purposes for which it was obtained.

K. Results of an Agency Analysis Using Personally Identifiable Employee Medical Information.

The UOSH medical records officer shall, as appropriate, assure that the results of an agency analysis using personally identifiable employee medical information are communicated to the employees whose personal medical information was used as a part of the analysis.

L. Annual Report. The UOSH medical records officer shall on an annual basis review UOSH's experience under this section during the previous year, and prepare a report to the administrator which shall be made available to the public. This report shall discuss:

1. The number of written access orders approved and a summary of the purposes for access;

2. The nature and disposition of employee, collective bargaining agent, and employer written objections concerning UOSH access to personally identifiable employee medical information; and

3. The nature and disposition of requests for inter-agency transfer or public disclosure of personally identifiable employee medical information.

M. Inter-Agency Transfer and Public Disclosure.

1. Personally identifiable employee medical information shall not be transferred to another agency or office outside of UOSH (other than to the AG's Office) or disclosed to the public (other than to the affected employee or the original record holder) except when required by law or when approved by the administrator.

2. Except as provided in paragraph M.3. below, the administrator shall not approve a request for an inter-agency transfer of personally identifiable employee medical information, which has not been consented to by the affected employees, unless the request is by a public health agency which:

a. Needs the requested information in a personally identifiable form for a substantial public health purpose;

b. Will not use the requested information to make individual determinations concerning affected employees which could be to their detriment;

c. Has regulations or established written procedures providing protection for personally identifiable medical information substantially equivalent to that of this section; and

d. Satisfies an exemption to the Government Records Access and Management Act (GRAMA) to the extent that the GRAMA applies to the requested information (See Part 2, Access to Records, of Utah Code Ann. Title 63G, Chapter 2).

3. Upon the approval of the administrator, personally identifiable employee medical information may be transferred to:

a. The National Institute for Occupational Safety and Health (NIOSH) and

b. The AG's Office when necessary with respect to a specific action under the Utah OSH Act.

4. The administrator shall not approve a request for public disclosure of employee medical information containing direct personal identifiers unless there are compelling circumstances affecting the health or safety of an individual.

5. The administrator shall not approve a request for public disclosure of employee medical information which contains information which could reasonably be used indirectly to identify specific employees when the disclosure would constitute a clearly unwarranted invasion of personal privacy.

6. Except as to inter-agency transfers to NIOSH or the AG's Office, the UOSH medical records officer shall assure that advance notice is provided to any collective bargaining agent representing affected employees and to the employer on each occasion that UOSH intends to either transfer personally identifiable employee medical information to another agency or disclose it to a member of the public other than to an affected employee. When feasible, the UOSH medical records officer shall take reasonable steps to assure that advance notice is provided to affected employees when the employee medical information to be released or disclosed contains direct personal identifiers.

KEY: safety
Date of Enactment or Last Substantive Amendment: [~~October 15, 2018~~]2019
Notice of Continuation: October 19, 2017
Authorizing, and Implemented or Interpreted Law: 34A-6

Natural Resources, Parks and Recreation
R651-207
Registration Fee

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 44141
FILED: 10/17/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: At the conclusion of the 2019 General Session, $405,000 in ongoing funding was appropriated from the Division of Parks and Recreation (Division) Boating Restricted Account to the Division of Wildlife Resources (DWR) to fund Aquatic Invasive Species interdiction efforts. This appropriation created a significant reduction in funding that has been designated for boating law enforcement, education, and access efforts. This rule amendment, that was approved by the Board of Parks and Recreation, allows for a $10 yearly increase in registration fees. The fee was $30 per year and it will raise to $40 per year.

SUMMARY OF THE RULE OR CHANGE: The yearly boater registration fee will increase from $30 per year to $40 per year due to the reduction in funding that was appropriated

from the Boating Restricted fund to the DWR Aquatic Invasive Species interdiction efforts during the 2019 General Session.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 73-18-7(2)(b)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: This will cost the state an estimated $5,000 in time and materials in FY20 to adjust the registration database, and to provide outreach materials. The state will see an increase in income by $325,565 for FY20, and $651,130 for FY21 and FY22. The increase was derived by averaging the amount of registered boats in Utah over the calendar years 2016 to 2018 which is 65,113 boats x $10 increase.
♦ LOCAL GOVERNMENTS: This cost increase in registration will not affect local governments. It affects Utah boaters and will cost the state an estimated $5,000 in time and materials to adjust the registration base, but there is no affect to local governments.
♦ SMALL BUSINESSES: This will be an educated estimate on the grounds that the state does not track any data on business vs. private ownership for the registration process of watercraft. To estimate the cost or savings to small businesses, the Division of Parks and Recreation used numbers from a registered livery database. The Division requires businesses that rent watercraft to register with the Division as a livery. This is an estimate due to the Division not tracking the number of employees in this registration process so there can be no delineation between small and non-small businesses. Of those businesses that have registered with the Division as a livery (and rent motorized watercraft) it is determined that 22 of the 50 businesses registered will be affected. The level of this impact will also be estimated as an average because the Division does not track the exact amount of watercraft owned by each business. The estimated number of watercraft affected is 650, which will be a $3,250 increase for FY20 and a $6,500 increase for FY21 due to the 12-month registration cycle and $0 increase FY22 on businesses in the state.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Affected: Yes, subtracting the estimated small business owned watercraft (650) from the total amount of watercraft (65,113) to be affected will be 64,463 watercraft. This will equate to a $322,315 increase (32,556 x $10) for FY20 which is a half a year and a $651,130 increase (65,113 x $10) for full years of FY21 and $651,130 FY22.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Compliance costs for affected persons will be an increase of $10 per boat registration per year.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This registration increase should have little impact on businesses but it will cost individual boat owners.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
PARKS AND RECREATION
ROOM 116
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Tammy Wright by phone at 801-538-7359, by FAX at 801-538-7378, or by Internet E-mail at tammywright@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/16/2019

THIS RULE MAY BECOME EFFECTIVE ON: 12/23/2019

AUTHORIZED BY: Jeff Rasmussen, Acting Director

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	**FY 2020**	**FY 2021**	**FY 2022**
State Government	$5,000	$0	$0
Local Government	$0	$0	$0
Small Businesses	$3,250	$6,500	$6,500
Non-Small Businesses	$0	$0	$0
Other Person	$322,315	$644,630	$644,630
Total Fiscal Costs:	**$330,565**	**$651,130**	**$651,130**
Fiscal Benefits			
State Government	$325,565	$651,130	$651,130
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits:	**$325,565**	**$651,130**	**$651,130**

Net Fiscal Benefits:	**-$5,000**	**$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
Inestimable impacts for non-small businesses. The Division of Parks and Recreation has no means to delineate between small business and non-small business, thus the impacts listed in the table to small businesses may include non-small businesses but levels are unknown.

The head of department of Natural Resources, Michael R. Styler (who was Executive Director at the time this rule was reviewed and approved), has reviewed and approved this fiscal analysis.

R651. Natural Resources, Parks and Recreation.
R651-207. Registration Fee.
R651-207-1. Yearly Registration Fee.
The registration fee shall be [~~$30~~]$40 per year.

KEY: boating
Date of Enactment or Last Substantive Amendment: [~~February 11, 2015~~]2019
Notice of Continuation: January 7, 2016
Authorizing, and Implemented or Interpreted Law: 73-18-7(2)(b)

Natural Resources, Parks and Recreation
R651-611
Fee Schedule

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 44183
FILED: 11/01/2019

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: It came to the Division of Parks and Recreation's (Division) attention that some original wording was inadvertently removed from this rule. The Division does not know who was responsible for the removal of the wording, Administrative Courts or our Division, but it was removed not realizing the consequences the removal would have. The wording "All fees required under this fee schedule are to be paid in advance of occupancy or use of facilities" is needed so that county attorneys can prosecute a "failure to pay park fee" violation. Currently, no prosecution can be taken on this rule. The original wording needs to be put back into this rule. The second part of this amendment addresses a fee list included in this rule currently and is set by the Utah State Legislature, so it is redundant to have it in this rule.

SUMMARY OF THE RULE OR CHANGE: This amendment has two purposes. The first is that the wording "All fees required under this fee schedule are to be paid in advance of occupancy or use of facilities" was removed from this rule inadvertently and needs to be put back into this rule so that county attorneys can prosecute for failure to pay park fee violations. If broken, this rule is an infraction with a minimal fine that can be charge if convicted in court. The alternate citation code park rangers can cite for is Section 76-6-409, which carries a hefty fine of $680 and is a misdemeanor B. A park ranger would cite someone only under this code for action against a habitual, documented offender that refuses to pay park fees after warnings. Park rangers use the lesser charge in Section R651-611-1 to gain compliance from users that are not repeat offenders. Without this amendment, the park rangers would be forced to cite under Section 76-6-409, which is Theft of Services for violators of this rule. Part Two: The fee schedule is set by the Legislature as part of the statute. By removing the fees list from this rule, it will eliminate conflicts between Division rules and statute.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 79-4-203(8)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There is no cost or savings to the state budget as this is a wording change only and a formal removal of the fee list because the fee is set by the Legislature and is in statute.
♦ LOCAL GOVERNMENTS: Local governments are not affected by this amendment because wording that was removed inadvertently from the rule affects only violators of a "failure to pay park fee" when visiting a state park. The second part of this amendment does not affect local governments as there is no change in fees, but the list is being removed so as not to be redundant in publishing park fees. The Legislature sets the fees and they are in state statute.
♦ SMALL BUSINESSES: Small businesses are not affected by this amendment because wording that was removed inadvertently from the rule affects only violators of a "failure to pay park fee" when visiting a state park. The second part of this amendment does not affect them either as there is no change in fees. The list is being removed so as not to be redundant in publishing park fees. The Legislature sets the fees and they are part of state statute.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Persons other than small businesses are not affected by this amendment because wording is being replaced that was removed inadvertently from the rule affects and only violators of a "failure to pay park fee" when visiting a state park. The second part of this amendment does not affect them either. The fee list is being removed so as not to be redundant in publishing park fees. The Legislature sets the fees and they are part of state statute.

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

was inadvertently removed from the rule is being replaced and will be helpful to a violator if cited under this rule because the fine won't be as large. The second part of this amendment does not have compliance costs associated with the change as the list is being removed only from this rule and is part of state statute.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule amendment should not impact businesses.

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

NATURAL RESOURCES
PARKS AND RECREATION
ROOM 116
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Tammy Wright by phone at 801-538-7359, by FAX at 801-538-7378, or by Internet E-mail at tammywright@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/16/2019

THIS RULE MAY BECOME EFFECTIVE ON: 12/23/2019

AUTHORIZED BY: Jeff Rasmussen, Acting 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
For parties where there is no impact: This rule amendment is not expected to have any fiscal impacts on non-small business revenues or expenditures, because the amendment is to replace a part of the rule that was inadvertently removed and will allow park rangers to cite under that rule for 'failure to pay park fee' violations and will allow county attorneys to prosecute under this rule. This fee list removal does not affect them as it is already included in State Statute and is set by the Legislature.

The head of Department of Natural Resources, Brian Steed, has reviewed and approved this fiscal analysis.

R651. Natural Resources, Parks and Recreation.
R651-611. Fee Schedule.
R651-611-1. Use Fees.

All fees required under the Division's fee schedule are to be paid in advance of occupancy or use of facilities.

All fees for the Division of Parks and Recreation may not exceed, but may be less than, the amounts stated in the division's fee schedule as approved annually by the Utah State Legislature.

[~~TABLE~~

~~1. Application Fees~~
~~Easement, Grazing permit,~~
~~Construction/Maintenance,~~
~~Special Use Permit, Waiting List $250.00~~
~~2. Assessment and Assignment Fees~~
~~Contract Assignment $20.00~~
~~Fee collection, return checks,~~
~~and duplicate document $30.00~~
~~Staff or researcher time per hour $50.00~~
~~Equipment and building rental per hour $100.00~~
~~Photo copy each $1.00~~
~~3. Boating Fees~~
~~Boat Mooring~~
~~Day Use $6.00~~
~~Boat Camping (2:00pm) $20.00~~
~~In/Off Season with or without Utilities~~
~~(per foot) $7.00~~
~~Watercraft Launch Fee $25.00~~
~~Boat Storage $200.00~~
~~4. Dry Storage~~
~~Boating Season, Overnight until 2:00pm,~~
~~Off-Season, Unsecured $75.00~~

~~5. Camping Fees~~
~~Camping Extra Vehicle Fees $15.00~~
~~Camping Fees $28.00~~
~~Group Camping Fees $400.00~~
~~Reservation Fee $10.65~~
~~6. Entrance Fees~~
~~Bicycles and Pedestrians $20.00~~
~~Bicycles and Pedestrians Annual Pass $24.00~~
~~Motor Vehicles~~
~~Day Use Annual Pass $75.00~~
~~Commercial Dealer Demo Pass $200.00~~
~~Commercial Groups - per person $3.00~~
~~Commuter Annual Pass $10.00~~
~~Parking Fee $5.00~~
~~Causeway $2.00~~
~~Entrance Fees $15.00~~
~~Group Site Day-Use Fees $250.00~~
~~7. Golf Course Fees~~
~~School Teams, Tournament Fee (per player) $6.00~~
~~Gift Certificate Fee (per player) $6.00~~
~~8. Golf Course GREENS FEES~~
~~Promotional Pass -~~
~~Single person - Personal golf cart $400.00~~
~~20 Round Card Pass $260.00~~
~~Promotional Promotional Pass $1,100.00~~
~~9 holes $18.00~~
~~9. Golf Course Fees RENTALS~~
~~Club Rental, per 9 holes $17.00~~
~~Motorized cart, per 9 holes $16.00~~
~~Pull carts, pre 9 holes $3.50~~
~~Companion Fee $7.00~~
~~Driving Range $9.00~~
~~10. Lodging Fees~~
~~Cabins and Yurts $80.00~~
~~11. Repository Fees~~
~~Curation Fee (per storage unit) $700.00~~
~~Annual Repository Agreement Fee~~
~~(per storage unit) $80.00~~
~~Annual Agreement Fee $50.00~~
~~12. Boating Section Fees~~
~~Statewide Boat Registration Fee $25.00~~
~~Carrying Passengers for Hire Fee $200.00~~
~~Boat Livery Registration Fee $100.00~~
~~13. Boating Education Fee~~
~~Division's Personal Watercraft Course $12.00~~
~~State Issued and Replacement~~
~~Boating Education certificate $5.00~~
~~14. OHV Program Fee~~
~~Statewide OHV Registration Fee $22.00~~
~~State issued permit to non-resident~~
~~OHVs, in which there is no reciprocity $30.00~~
~~15. OHV Education Fee~~
~~Division's Off-highway Vehicle~~
~~Program Safety Certificate $30.00~~
~~State Issued and Replacement~~
~~OHV Safety Certificate $2.00~~]

KEY: parks, fees
Date of Enactment or Last Substantive Amendment: [~~July 8, 2013~~]December 23, 2019
Notice of Continuation: January 7, 2016
Authorizing, and Implemented or Interpreted Law: 79-4-203(8)

Natural Resources, Parks and Recreation
R651-633
Special Closures or Restrictions

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 44186
FILED: 11/01/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Dogs are permitted on leash at Dead Horse Point State Park and permitted on the eight miles of hiking trails in the park. These trails offer hikers much better views and more access to overlooks on the rim and no bikes are allowed. There are very few people that hike the mountain bike trails and the separation significantly reduces potential user conflicts. The purpose of this amendment is to make these provisions part of the official administrative rule and to allow for segregated use as it has proven to enhance the visitor experience and provides for greater safety.

SUMMARY OF THE RULE OR CHANGE: Dogs are permitted on leash at Dead Horse Point State Park and permitted on the eight miles of hiking trails in the park. These trails offer hikers much better views and more access to overlooks on the rim and no bikes are allowed. There are very few people that hike the mountain bike trails and the separation significantly reduces potential user conflicts. Currently, staff and all park information states that dogs are not permitted on the Intrepid Trail System but this is a park imposed rule, not an official one. The same is true of the hiking only rules on the hiking trails. Allowing dogs on the Intrepid Trail System could be dangerous and it would be difficult to enforce the leash rule. There are several commercial outfitters that guide clients on the trail, and sell it as one of the best beginner, non-motorized single track trails in the Moab area. Segregated use has proven to enhance the visitor experience and provides for greater safety.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 79-4-203 and Section 79-4-304

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: This amendment has no additional fiscal costs or savings to the state budget because it has been unofficially enforced as a park rule for 10 years so no change will take place on the park level. The amendment will provide for greater safety and enhance the visitor experience by segregating use.
♦ LOCAL GOVERNMENTS: Local governments are not affected by this amendment. It is only making the rule official as an administrative rule because it has been enforced by the park for 10 years.
♦ SMALL BUSINESSES: Small businesses are not affected by this amendment. It has been unofficially enforced as a park rule for 10 years. The amendment will provide for greater safety and enhance the visitor experience by segregating use. The amendment will enhance the visitor experience and will provide for greater safety.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Persons other than small businesses are not affected

because it has been unofficially enforced as a park rule for 10 years. The amendment will provide for greater safety and enhance the visitor experience by segregating use.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons as the amendment is to provide for greater safety and enhanced user experiences. It has also been an unofficial park rule for 10 years and requires no costs for compliance.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule amendment should have minimal to no impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
PARKS AND RECREATION
ROOM 116
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Tammy Wright by phone at 801-538-7359, by FAX at 801-538-7378, or by Internet E-mail at tammywright@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/16/2019

THIS RULE MAY BECOME EFFECTIVE ON: 12/23/2019

AUTHORIZED BY: Jeff Rasmussen, Acting Director

Appendix 1: Regulatory Impact Summary Table*

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

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

Appendix 2: Regulatory Impact to Non-Small Businesses
This rule amendment is not expected to have any fiscal impact on non-small businesses' revenues or expenditures, because the amendment has been in effect as an unofficial park rule for 10 years so there will be no impact in adding this to this rule.

The head of Department of Natural Resources, Brian Steed, has reviewed and approved this fiscal analysis.

R651. Natural Resources, Parks and Recreation.
R651-633. Special Closures or Restrictions.
R651-633-1. Emergency Closures or Restrictions.

No person shall be in a closed area or participate in a restricted activity which has been posted by the park manager to protect public safety or park resources.

R651-633-2. General Closures or Restrictions.

Persons are prohibited from being in a closed area or participating in a restricted activity as listed for the following park areas:

(1) Coral Pink Sand Dunes State Park - Motorized vehicle use is prohibited in the non-motorized area of the sand dunes, except for limited and restricted access through the travel corridor;

(2) Dead Horse State Park[~~- Hang gliding, para gliding and B.A.S.E. jumping is prohibited;~~]

(a) Hang gliding, para gliding and B.A.S.E. jumping is prohibited;

(b) Dogs on the Interpid Mountain Bike Trail System are prohibited; and

(c) Bicycling on all Rim Hiking Trails is prohibited unless posted open;

(3) Deer Creek State Park - Dogs are prohibited below high water line and in or on the reservoir except for guide or service dogs as authorized by Section 62A-5b-104;

(4) Jordanelle State Park - Dogs are prohibited in the Rock Cliff area except for the Perimeter Trail and designated parking areas except for guide or service dogs as authorized by Section 62A-5b-104;

(5) Snow Canyon State Park -

(a) All hiking and walking in the park is limited to roadways, designated trails and slick rock areas and the Sand Dunes area,

(b) The last half-mile of the Johnson Canyon Trail is closed annually from March 15 through September 14 except by permit or guided walk; this portion of trail is open from September 15 through March 14.

(c) Black Rocks Canyon is closed annually from March 15 to June 30,

(d) West Canyon climbing routes are closed annually from February 1 to June 1.

(e) Dogs are prohibited on all trails and natural areas of the park unless posted open, except for guide or service dogs as authorized by Section 62A-5b-104.

(f) Hang gliding, para gliding and B.A.S.E. jumping is prohibited.

KEY: parks
Date of Enactment or Last Substantive Amendment: [~~July 25, 2017~~]2019
Notice of Continuation: June 28, 2018
Authorizing, and Implemented or Interpreted Law: 79-4-203; 79-4-304; 79-4-501

Natural Resources, Parks and Recreation
R651-634
Nonresident OHV User Permits and Fees

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 44182
FILED: 11/01/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: H.B. 105 was passed in the 2019 General Session House which removed reciprocity with the other 49 states, so any Off Highway Vehicle (OHV) being operated on open designated OHV trails in Utah, would need to display the Utah non-resident permit. The Division of Parks and Recreation (Division) will no longer need to create a list of reciprocity states. The Division is required to remove this provision based upon the passage of H.B. 105.

SUMMARY OF THE RULE OR CHANGE: The OHV Program maintains a list of states in which non-residents would need to purchase a Utah non-resident OHV permit. This list is updated annually and disseminated to permit vendors, websites, and potential visitors. Due to the passing of H.B. 105 (2019), OHVs being operated on open designated OHV trails in Utah, would need to display the Utah non-resident permit. The Division will no longer need to create a list of reciprocity states. The removal of this language would bring the Division in compliance with H.B. 105 (2019).

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 41-22-35 and Section 79-4-304

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There is no cost of savings to the state budget. The Division is no longer required to complete a list of reciprocity for Non-Resident Off Highway Vehicles to operate within Utah and this amendment would make the Division compliant with the law.
♦ LOCAL GOVERNMENTS: Local governments are not affected by this amendment because they do not have anything to do with the Division creating a list of reciprocity for non-resident OHVs. Local governments are not affected by the list not being created.
♦ SMALL BUSINESSES: This rule amendment is not expected to affect small businesses' revenues or expenditures, because it removes only language that is identified in the H.B. 105 (2019), which previously required the Division to create an annual list of states reciprocity for OHV use. The Division will no longer be required to create this list as the law has removed reciprocity for all states.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This rule amendment is not expected to affect other persons. H.B. 105 (2019) removed language that required the Division to create an annual reciprocity list for other states. The Division is no longer required to do that and not creating the list does not affect other persons. The law removed reciprocity with any state for OHV use.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for this amendment. The Division is only affected because they no longer need to create a reciprocity list for non-resident OHV vehicles as the law removed reciprocity for all other states.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule should have minimal impact on businesses, although it may have an impact on out-of-state OHV use in the state. OHV recreationists will now have to obtain an out-of-state permit. This change in this rule is necessitated by a change in state law.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
PARKS AND RECREATION
ROOM 116
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Tammy Wright by phone at 801-538-7359, by FAX at 801-538-7378, or by Internet E-mail at tammywright@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/16/2019

THIS RULE MAY BECOME EFFECTIVE ON: 12/23/2019

AUTHORIZED BY: Jeff Rasmussen, Acting Director

Appendix 1: Regulatory Impact Summary Table*

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

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

Appendix 2: Regulatory Impact to Non-Small Businesses
This rule amendment is not expected to have any fiscal impact on non-small businesses' revenues or expenditures, because this removes language only that is identified in H.B. 105 (2019), which previously required the Division to create an annual list of states of reciprocity for OHV use. The Division will no longer be required to create this annual reciprocity list because the law has removed reciprocity with any state for off-highway vehicle use.

The head of Department of Natural Resources, Brian Steed, has reviewed and approved this fiscal analysis.

R651. Natural Resources, Parks and Recreation.
R651-634. Nonresident OHV User Permits and Fees.
R651-634-1. User Permits and Fees.

Except as provided below, any nonresident owning an off-highway vehicle, who operates or gives another person permission to operate the off-highway vehicle on any public land, trail, street or highway in this state, shall pay an annual off-highway vehicle user fee.

1. A decal will be issued which proves payment has been made. The decal will then be displayed on the off-highway vehicle as follows: On snowmobiles, the decal shall be mounted on the left side of the hood, pan or tunnel. On motorcycles, the decal shall be mounted on the left fork, or on the left side body plastic. On all-terrain vehicles, the decal shall be mounted on the rear of the vehicle. Vehicle types are defined in 41-22-2 UCA. In all instances, the decal shall be mounted in a visible location. The decal shall be non-transferable.

2. A receipt will be issued with the decal indicating the fee paid, the Vehicle Identification Number (VIN) of the off-highway vehicle, and the off-highway vehicle owner's name and address. This receipt shall remain with the off-highway vehicle at all times.

3. Fees charged will be in accordance with S.B. 14 (1999 Utah Laws 1, effective July 1, 1999), and H.B. 51 (2004 Utah Laws, Chapter 314, effective July 1, 2004) which state that the off-highway vehicle user annual fee will be $30 per year.

4. Nonresident OHV user permits shall continue in effect for a period of 12 months beginning with the first day of the calendar month of purchase, and shall not expire until the last day of the same month in the following year.

Applicants for a nonresident OHV user permit shall provide evidence that the applicant is the owner of the off-highway vehicle, and is not a resident of Utah. Such evidence shall include:

a. A government issued identification card showing the state of residency of the off-highway vehicle owner, and one of the following:

(1) A title or certificate of registration from a state other than Utah.

(2) An original bill of sale; or

b. A sworn affidavit stating that the off-highway vehicle is owned by a nonresident of the State of Utah. The affidavit must state the name and address of the vehicle owner, and a description of the off-highway vehicle, including the Vehicle Identification Number (VIN).

[~~Off-highway vehicles currently registered in a state offering reciprocal operating privileges to Utah residents shall be exempt from the nonresident user fee requirements of this rule. The Division shall maintain a list of states offering reciprocal operating privileges to Utah residents. This list shall be updated at least annually.~~]

Provisions of this rule shall not apply to off-highway vehicles exempt under 41-22-35(1)(b)(i), or to off-highway vehicles participating in scheduled competitive events sponsored by a public or

private entity, or in noncompetitive events sponsored in whole or in part by any governmental entity; or to Street Legal All-terrain Vehicles as defined in 41-6a-102(61), and registered for highway use in a state that offers reciprocal highway operating privileges to Utah residents operating Street Legal All-Terrain vehicles.

Provisions of this rule shall not apply to off-highway vehicles owned by an off-highway vehicle manufacturer and being operated exclusively for the purpose of an off-highway vehicle manufacturer sponsored event; provided that the operator of the vehicle has in his or her possession a letter or certificate issued by the manufacturer which contains the following information:

(1) The name, address and contact information of the off-highway vehicle manufacturer; and

(2) A physical description of the vehicle, including the vehicle identification number or another number assigned by the manufacturer for identification purposes; and

(3) A brief description of the manufacturer sponsored event, including the dates thereof; and

(4) The name of the authorized operator(s) and

(5) An authorized signature of a manufacturer's representative.

KEY: parks
Date of Enactment or Last Substantive Amendment: [~~December 26, 2013~~]December 23, 2019
Notice of Continuation: January 22, 2015
Authorizing, and Implemented or Interpreted Law: 41-22-35; 79-4-304

Natural Resources, Wildlife Resources
R657-59
Private Fish Ponds, Short Term Fishing Events, Private Fish Stocking, and Institutional Aquaculture

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 44144
FILED: 10/22/2019

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to Regional Advisory Council meetings and the Wildlife Board meeting conducted for taking public input and reviewing the private pond rule.

SUMMARY OF THE RULE OR CHANGE: The amendments to this rule establish criteria for when a hobby aquaponics facility can operate without a Certificate of Registration.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 23-15-10 and Section 23-15-9

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: These amendments remove requirements that were time consuming and difficult for a hobby aquaponics operator to follow. The Division of Wildlife Resources (DWR) has determined that these amendments do not create a cost or savings impact to the state budget or DWR's budget, since the changes will not increase workload and can be carried out with the existing budget.
♦ LOCAL GOVERNMENTS: None--This filing does not create any direct cost or saving impact to local governments because they are not directly affected by these amendments. Nor are local governments indirectly impacted because these amendments do not create a situation requiring services from local governments.
♦ SMALL BUSINESSES: These amendments remove a requirement that was time consuming and difficult for a hobby aquaponics owner. DWR has determined these amendments do not impose any additional requirements on small businesses, nor generate a cost or savings impact to small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: These amendments remove a requirement that was time consuming and difficult for a hobby aquaponics owners. DWR has determined these amendments do not impose any additional requirements on other persons, nor generate a cost or savings impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: These amendments remove requirements that were time consuming and difficult for a hobby aquaponics owner. There are not any additional compliance costs associated with these amendments.

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

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/16/2019

THIS RULE MAY BECOME EFFECTIVE ON: 12/23/2019

AUTHORIZED BY: Mike Fowlks, Director

Appendix 1: Regulatory Impact Summary Table*

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

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

Appendix 2: Regulatory Impact to Non-Small Businesses
These rule amendments are not expected to have any fiscal impact on non-small businesses' revenues or expenditures, because it does not require a service or product from a non-small business.

The Executive Director of the Department of Natural Resources, Brian Steed, has reviewed and approved this fiscal analysis.

R657. Natural Resources, Wildlife Resources.
R657-59. Private Fish Ponds, Short Term Fishing Events, Private Fish Stocking, and Institutional Aquaculture.
R657-59-1. Purpose and Authority.

(1) Under the authority of Sections 23-15-9 and 23-15-10 of the Utah Code, this rule provides the standards and procedures for:

(a) private fish ponds;
(b) short term fishing events;
(c) aquaponics facilities;
(d) private fish stocking; and
([~~d~~]e) institutional aquaculture.

(2)(a) This rule does not regulate fee fishing or private aquaculture as provided in Title 4, Chapter 37 of the Utah Code, and Department of Agriculture Rule R58-17.

(b) The display of aquatic wildlife in aquaria for personal, commercial, or educational purposes is regulated by R657-3.

(3) A person engaging in any activity provided in Subsection (1) must also comply with all requirements established by Title 4 of Utah Code and all rules promulgated by the Utah Department of Agriculture, including, but not limited to:

(a) requirements for the importation of aquaculture products into Utah; and

(b) requirements for fish health approval for aquaculture products.

(4) Any violation of, or failure to comply with, any provision of Title 23 of the Utah Code, this rule, or any specific requirement contained in a certificate of registration issued pursuant to this rule may be grounds for suspension of the certificate or denial of future certificates, as determined by the division.

R657-59-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Aquaculture" means the husbandry, production, harvest, and use of aquatic organisms under controlled, artificial conditions.

(b) "Aquaculture facility" means any facility used for the husbandry, production, harvest, and use of aquatic organisms under controlled, artificial conditions that holds a valid Certificate of Registration from the Utah Department of Agriculture.

(c)(i) "Aquaculture product" means privately purchased, domestically produced aquatic organisms, or their gametes.

(ii) "Aquaculture product" does not include aquatic wildlife obtained from the wild.

[~~(d) "Aquatic wildlife"~~](d) "Aquaponics facility" means a facility that combines fish and plant culture for a non-commercial purpose where:

(i) all water flowing into or through the facility is completely isolated from any other water source via a self-contained water transport system;

(ii) all water flowing from the facility is discarded into a permitted sewer or septic system;

(iii) the aquatic animals held within the facility are used for hobby purposes only;

(iv) no aquatic animals are transported from the facility alive; and

(v) the primary use of the facility is for food production and not for the general display of fish in aquaria.

(e) "Aquatic wildlife" for the purposes of this chapter are aquatic organisms that are conceived and born in public waters.

([e]f) "Certified sterile salmonid" means any salmonid fish or gamete that originates from a health certified source and is incapable of reproduction due to triploidy or hybridization, and is confirmed as sterile using the protocol described in R657-59-13.

([~~f~~]g) "FEMA" means Federal Emergency Management Administration.

([~~g~~]h)(i) "HUC"or "Hyrologic Unit Code" means a cataloging system developed by the US Geological Survey and the Natural Resource Conservation Service to identify watersheds in the United States.

(ii) HUCs are typically reported at the large river basin (6-digit HUC) or smaller watershed (11-digit and 14-digit HUC) scale.

(iii) HUC maps and other associated information are available at http://water.usgs.gov/wsc/sub/1602.html.

([~~h~~]i) "Institutional aquaculture" means aquaculture engaged in by any institution of higher learning, school, or other educational program, or public agency.

[~~(i)~~](j) "Ornamental aquatic animal species" means any species of fish, mollusk, or crustacean that is commonly cultured and sold in the United States' aquarium industry for display as defined in R657-3-4.

[~~(j)~~](k) "Private fish pond" means a body of water or any fish culture system which:

(A) is not located on a natural lake, natural flowing stream, or reservoir constructed on a natural stream channel;

(B) is contained entirely on privately owned land; and

(C) is used for holding or rearing fish for a private, noncommercial purpose.

[~~(k)~~](l) "Purchase" means to buy, or otherwise acquire or obtain through barter, exchange, or trade for pecuniary consideration or advantage.

([~~l~~]m) "Salmonid" means any fish belonging to the trout/salmon family.

([~~m~~]n) "Short-term fishing event" means any event where:

(i) privately acquired fish are held or confined for a period not to exceed ten days in a temporary structure or container;

(ii) for the purposes of providing fishing ar recreational opportunity; and

(iii) no fee is charged as a requirement to fish.

([~~n~~]o) "Sterile" means the inability to reproduce.

R657-59-3. Certificate of Registration Not Required -- Private Fish Ponds[~~and~~], Short Term Fishing Events, and Aquaponics Facilities.

(1) A certificate of registration is not required to stock an aquatic animal in an aquaponics facility, provided:

(a) the aquatic animals stocked are accompanied by a valid health approval number issued by the Utah Department of Agriculture and Food pursuant to Chapter 4 Title 37 of Utah Code; and

(b) the aquatic animals to be stocked belong to one of the following species:

(i) bluegill;

(ii) hybrid bluegill (bluegill x green sunfish);

(iii) redear sunfish;

(iv) green sunfish;

(v) striped bass;

(vi) white bass;

(vii) hybrid striped bass or wiper (white bass x striped bass);

(viii) largemouth bass;

(ix) smallmouth bass;

(x) channel catfish

(xi) yellow perch;

(xii) fathead minnow;

(xiii) black crappie;

(xiv) white crappie;

(xv) rainbow trout;

(xvi) cutthroat trout;

(xvii) brown trout;

(xviii) brook trout;

(xix) tiger trout;

(xx) walleye;

(xxi) golden shiner; and

(xxii) any aquatic animal species classified as non-controlled for possession and importation under R657-3-22 or 23.

(2) A certificate of registration is not required to receive and stock an aquaculture product in a private fish pond, provided:

(a) the private fish pond satisfies the screening requirements established in R657-59-10;

(b) if a screen is required, the aquaculture product received must be of sufficient size to be incapable of escaping the pond through or around the screen;

(c) the species, sub-species, and sterility of the aquaculture product received is authorized for stocking in the area where the private fish pond is located consistent with the requirements in R657-59-11;

(d) the aquaculture product is:

(i) delivered to the pond by a licensed aquaculture facility as defined in Title 4 Chapter 37 of Utah Code; or

(ii) the owner, lessee, or operator of the private pond:

(A) possesses documentation from the aquaculture facility verifying the information itemized in R657-59-6 and R58-17-14 during transport; and

(B) assumes legal responsibility for directly transporting the fish from the aquaculture facility to the private fish pond;

(e) the owner, lessee, or operator of the pond obtains from the aquaculture facility providing the aquaculture product a valid health approval number issued by the Utah Department of Agriculture and Food pursuant to Chapter 4 Title 37 of Utah Code; and

(f) the owner or operator of the private fish pond provides the aquaculture facility a signed written statement that the pond and aquaculture product received are in compliance with this section.

([~~2~~])3) A certificate of registration is not required to receive and stock an aquaculture product in a short-term fishing event, provided:

(a) the temporary container or structure to be stocked is entirely separated from any public waterway or waterbody;

(b) the species, sub-species, and sterility of the aquaculture product received is authorized for stocking in the area where the short-term fishing event is located consistent with the requirements in R657-59-11;

(c) the aquaculture product is:

(i) delivered to the pond by a licensed aquaculture facility as defined in Chapter 4 Title 37 of Utah Code; or

(ii) the owner, lessee, or operator of the short-term fishing event:

(A) possesses documentation from the aquaculture facility verifying the information itemized in R657-59-6 and R58-17-14 during transport; and

(B) assumes legal responsibility for directly transporting the fish from the aquaculture facility to the short-term fishing event;

(d) the owner, lessee, or operator of the pond obtains from the aquaculture facility providing the aquaculture product a valid health approval number issued by the Utah Department of Agriculture and Food pursuant to Chapter 4 Title 37 of Utah Code; and

(e) the operator of the short-term fishing event provides the aquaculture facility a signed written statement that the short-term fishing event and aquaculture product received are in compliance with this section.

R657-59-4. Certificate of Registration Required -- Other Fish Stocking Activities.

(1)(a) A certificate of registration must be obtained from the division to receive, possess, stock, or release an aquaculture product or aquatic wildlife in a manner that does not satisfy the certificate of registration waiver requirements identified in R657-59-3.

(b) If a certificate of registration is required, a separate application for each fish stocking request must be submitted, except:

(i) stocking locations are separated by less than 1/2 mile may be placed on a single application; and

(ii) water bodies that drain to, or are modified to drain to, the same drainage may be listed on a single application.

(2) Fish stocked or released in a water body not eligible as a private fish pond or short-term fishing event under R657-59-3 are considered wild aquatic wildlife and may be taken only as provided in Rule R657-13 and the fishing proclamation.

(3) A permanent water body stocked pursuant to a certificate of registration for private stocking may not be screened to contain fish, except:

(a) a water stocked with grass carp to control aquatic weeds must be adequately screened to prevent the grass carp from escaping; and

(b) the division may require screening of the water body to protect wildlife resources found in the water body and any connected waterways.

(4)(a) An application for a certificate of registration for private stocking to stock fish other than grass carp may be approved only if:

(i) the stocking will only occur on privately owned land;

(ii) the body of water to be stocked is a reservoir that is wholly contained on the land owned by the applicant;

(iii) the body of water is not stocked or otherwise actively managed by the division;

(iv) the fish to be stocked are for a non-commercial purpose; and

(v) in the opinion of the division, stocking will not interefere with division management objectives or cause detrimental interactions with other species of fish or wildlife.

(5) An application for a certificate of registration for private stocking of triploid grass carp for control of aquatic weeds will be evaluated based upon:

(a) the severity of the weed problem;

(b) availability of other suitable means of weed control;

(c) adequacy of screening to contain the grass carp; and

(d) potential for conflict with division management objectives or detrimental interactions with other species of fish or wildlife.

R657-59-12. Institutional Aquaculture.

(1)(a) A certificate of registration is required for any public agency, institution of higher learning, school, or educational program to engage in aquaculture.

(b) A certificate of registration is not required for any public agency, institution of higher learning, school, or educational program to engage in the hobby of aquaponics, so long as the aquaponics facility complies with the regulations in R657-59-3(1).

(2) Aquatic wildlife or aquaculture products produced by institutional aquaculture may not be:

(a) sold;

(b) stocked; or

(c) transferred into waters of the state unless specifically authorized by the certificate of registration.

(3) The fish health approval requirements of Title 4 Chapter 37 apply.

(4)(a) A certificate of registration for institutional aquaculture may be obtained by submitting an application to the division.

(b) A certificate of registration may be renewed by submitting an application prior to the expiration date of the current certificate of registration.

(c) The application may require up to 30 days for processing.

(d) The division may require a site inspection of the institutional aquaculture facility be performed to confirm compliance with the provisions found in this rule.

(e) The division may deny an application where:

(i) the application is incomplete, filled out incorrectly, or submitted without the appropriate fee;

(ii) operating the institutional aquaculture facility may violate any federal, state or local law or any agreement between the state and another party;

(iii) the application fails to demonstrate an ability to operate the aquaculture facility in a manner that protects Utah's wildlife, their habitats, and other aquaculture facilities from contamination; or

(iv) the applicant has violated any provision of Title 23, Utah Wildlife Resources Code, Administrative Code R657, a guidebook of the Wildlife Board, a certificate of registration, an order of the Wildlife Board, or any other law that bears a reasonable relationship to the applicant's ability to responsibly operate an institutional aquaculture facility.

(5) An application for a certificate of registration may not be denied without the review and consent of the division director or a designee.

(6) A certificate of registration for a institutional aquaculture may remain effective for up to 5 years from the date of issuance as identified on the certificate of registration, unless:

(a) amended by the division at the request of the certificate of registration holder;

(b) terminated or modified by the division pursuant to R657-59-13; or

(c) suspended by the division or a court pursuant to Section 23-19-9.

KEY: wildlife, aquaculture, fish
Date of Enactment or Last Substantive Amendment: [~~March 13, 2017~~]2019
Notice of Continuation: July 19, 2018
Authorizing, and Implemented or Interpreted Law: 23-15-9; 23-15-10

Public Safety, Administration
R698-8
Local Public Safety and Firefighter Surviving Spouse Trust Fund

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 44171
FILED: 10/31/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended to reflect legislative changes that have been made since the rule was last updated; S.B. 156 (2017).

SUMMARY OF THE RULE OR CHANGE: The passage of S.B. 156 during the 2017 General Session, which was made effective on July 1, 2018, required that all employers participate in the trust fund, rather than participation being voluntary. Changes were made to Section R698-8-4 to reflect this statutory change. In addition, changes were made to Section R698-8-4 to clarify the requirement for eligibility for reimbursement from the trust fund for health care coverage costs provided to a surviving spouse or dependent children as provided in Section 53-17-301.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-17-301

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There is not an anticipated cost or savings to the state budget as a result of the changes reflected in this rule amendment because the rule is being amended to coordinate with statutory language, and to clarify the requirements for a participating agency to be eligible for reimbursement from the trust fund.
♦ LOCAL GOVERNMENTS: There is not an anticipated cost or savings to local governments as a result of the changes reflected in this rule amendment because this rule is being amended to coordinate with statutory language, and to clarify the requirements for a participating agency to be eligible for reimbursement from the Local Public Safety and Firefighter Surviving Spouse Trust Fund. The statutory language requires that an employer, as defined in Section 49-11-102, participate in the trust fund. If the employer is compliant with statutory requirements to participate, they will be eligible for reimbursement from the trust fund for health coverage costs they are obligated to pay for a surviving spouse or dependent children under Section 53-17-201. If they are not compliant with the statutory requirements to participate in the trust fund, they will not be eligible for reimbursement for the costs, in which case, they will bear the cost for providing the health care coverage for a surviving spouse and dependent children as required under Section 53-17-201.
♦ SMALL BUSINESSES: There is not an anticipated cost or savings to small businesses as a result of the changes reflected in this rule amendment because this rule is being amended to coordinate with statutory language, and to clarify the requirements for a participating agency to be eligible for reimbursement from the trust fund. Small businesses are not impacted by the Local Public Safety and Firefighter Surviving Spouse Trust Fund.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is not an anticipated cost or savings to persons other than small businesses, businesses, or local government entities as a result of the changes reflected in this rule amendment because this rule is being amended to coordinate with statutory language and to clarify the requirements for a participating agency to be eligible for reimbursement from the Local Public Safety and Firefighter Surviving Spouse Trust Fund.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is not an anticipated compliance cost for affected persons as a result of the changes reflected in this rule amendment because this rule is being amended to coordinate with statutory language, and to clarify the requirements for a participating agency to be eligible for reimbursement from the Local Public Safety and Firefighter Surviving Spouse Trust Fund.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no non-small businesses that will be impacted as a result of the changes in this rule. This rule is being amended to coordinate with statutory language, and to clarify the requirements for a participating law enforcement or firefighter agency to be eligible for reimbursement from the Local Public Safety and Firefighter Surviving Spouse Trust Fund. This rule does not apply to non-small businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
PUBLIC SAFETY
ADMINISTRATION
CALVIN L RAMPTON COMPLEX
4501 S 2700 W 1ST FLR
SALT LAKE CITY, UT 84119-5994
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Kim Gibb by phone at 801-556-8198, by FAX at 801-964-4482, or by Internet E-mail at kgibb@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/16/2019

THIS RULE MAY BECOME EFFECTIVE ON: 12/24/2019

AUTHORIZED BY: Jess Anderson, Commissioner

Appendix 1: Regulatory Impact Summary Table*

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

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

Appendix 2: Regulatory Impact to Non-Small Businesses
There are no non-small businesses that will be impacted as a result of enactment of this rule. This rule is being amended to coordinate with statutory language and to clarify the requirements for a participating law enforcement or firefighter agency to be eligible for reimbursement from the Local Public Safety and Firefighter Surviving Spouse Trust Fund. This rule does not apply to non-small businesses.

The head of the Department of Public Safety, Jess L. Anderson, has reviewed and approved this fiscal analysis.

R698. Public Safety, Administration.
R698-8. Local Public Safety and Firefighter Surviving Spouse Trust Fund.
R698-8-1. Purpose.

The purpose of this rule is to establish procedures for implementation of the Public Safety Officer and Firefighter Line-of-Duty Death Act.

R698-8-2. Authority.

This rule is authorized by Section 53-17-301.

R698-8-3. Definitions.

(1) The terms used in this rule are defined in Section 53-17-102.

(2) In addition:

(a) "department" means the Utah Department of Public Safety; and

(b) "participating agency" means an employer defined in Section 53-17-102 that has elected to participate in the trust fund.

R698-8-4. Participation Process.

(1) An employer that elects or is required to participate in the trust fund pursuant to Section 53-17-301 shall submit[~~no later than June 30, 2017~~]:

(a) a cost sharing agreement form approved by the board;

(b) a certificate of eligible employees form approved by the board that identifies the number of eligible members as of March 31, 2017; and

(c) the required annual premium payment as determined by the board.

(2) The information described in Subsection R698-8-4(1) shall be addressed to the Commissioner's office of the Department of Public Safety, Attn. Trust Fund.

(3) The cost sharing agreement form shall contain the following:

(a) the name, address and phone number of the employer; and

(c) the name, mailing address and signature of the agency administrator completing the cost sharing agreement form.

R698-8-5. Annual Payment of Premiums.

(1) A participating agency shall continue to submit annual premium payments to the department in order to continue to participate in the trust fund.

(2) Annual premium payments shall be submitted to the department no later than June 30 of each year and shall be accompanied by an updated certificate of eligible employees form that identifies the number of eligible members as of March 31.

(3) If a participating agency fails to submit a premium payment as required in this subsection, the department shall notify the agency administrator who completed the cost sharing agreement of the delinquency in premium payments.

(4) If after receipt of a delinquency notice the participating agency fails to submit the annual premium payment within 30 days of the date of the notice, the department shall:

(a) notify the agency administrator who completed the cost sharing agreement that the employer is no longer considered to be a participant in the trust fund; and

(b) include in the notice the total amount of premiums paid by the employer into the trust fund.

R698-8-5. Reimbursement of Health Coverage Costs.

(1) In the event of a line-of-duty death of a member, a participating agency may receive reimbursement for payment of health coverage premiums and contributions made to a health savings account as described in Section 53-17-201.

(2) To receive reimbursement for payments described in Subsection (1), the participating agency shall submit to the department:

(a) a request for reimbursement on a form approved by the board upon initial request; and

(b) a copy of the statement provided by the group health plan that includes the participating agency's costs for coverage upon initial request and each month thereafter.

(3) The request for reimbursement form shall include:

(a) the name of the spouse for whom coverage is provided; and

(b) the name and date or birth for each child under the age of 26 for whom coverage is provided.

(4) If the member did not have a living spouse at the time of death, the request for reimbursement form shall include the name and date of birth for each child under the age of 26 for whom coverage is provided.

(5) An employer is only eligible for reimbursement of health care coverage costs from the trust fund for a line of duty death that occurred between July 1, 2005 and July 1, 2018 if the employer participated in the trust fund in compliance with Section R698-8-4 prior to July 1, 2018 and is current with premium payments.

(6) An employer is not eligible for reimbursement of health care coverage costs from the trust fund for a line of duty death if at the time the line of duty death occurs, the employer is not a participating agency in compliance with this rule.

R698-8-6. Discontinuation of Reimbursement of Health Coverage Costs.

(1) In the event of the death of a spouse or child for whom coverage is provided under Section 53-17-201, the participating agency shall submit to the department:

(a) a form approved by the board that includes;

(i) the name of the spouse or child that is deceased;

(ii) the individual's date of birth; and

(iii) the date of the individual's death.

(2) Upon receipt of the form described in Subsection (1), the department shall discontinue reimbursement of health coverage costs from the trust fund for the deceased individual.

(3) If reimbursement is being paid from the trust fund for health coverage costs to an employer for a child under the age of 26, reimbursement will be automatically discontinued when the child reaches the age of 26.

KEY: line-of-duty death, cost sharing agreement, surviving spouse trust fund
Date of Enactment or Last Substantive Amendment: [~~June 7, 2017~~]2019
Authorizing, and Implemented or Interpreted Law: 53-17-301[~~(5)~~]

Public Safety, Driver License
R708-7
Functional Ability in Driving: Guidelines for Physicians

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 44166
FILED: 10/30/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule change is to incorporate changes to the "Functional Ability in Driving: Guidelines and Standards for Health Care Professionals" as recommended by the Medical Advisory Board to the Driver License Division (Division), and to specify the manner in which the "Functional Ability in Driving: Guidelines and Standards for Health Care Professionals" are made available to health care providers and members of the public.

SUMMARY OF THE RULE OR CHANGE: The Medical Advisory Board (Board) recommended changes to the Functional Ability Guidelines and Standards which included modifying the titles of some of the categories the Division will follow including, epilepsy which will be known as seizures and psychiatric or emotional conditions which will be known as mental health. The Board recommended removing the hearing and balance category, this condition can be addressed in other areas monitored by a healthcare professional. These changes required the administrative rule be amended to reflect the recommendations made by the Board and adopted by the Division. In addition, the amendment proposes that the Functional Ability Guidelines and Standards would stop being mass printed for the purpose of distribution to Health Care Providers but instead be provided in a digital format to allow for timely, up-to-date revisions. Printed copies of the guidelines will be made available for purchase at Driver License offices.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 49 CFR 391.43 and Section 53-3-224 and Section 53-3-303 and Section 53-3-304

MATERIALS INCORPORATED BY REFERENCE:

♦ Updates Functional Ability in Driving: Guidelines and Standards for Health Care Professionals, published by Utah Driver License Division, 01/01/2019

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: There is no anticipated cost or savings to the state budget as a result of this rule amendment. The Division has previously had the "Functional Ability in Driving: Guidelines and Standards for Health Care Professionals" printed by Utah Correctional Industries. The last printing of the guidelines occurred in 2015 and cost approximately $340, which was transferred from the Utah Driver License Division to Utah Correctional Industries. Due to the fact that the guidelines will no longer be printed in bulk, the cost for printing will no longer need to be deducted from the Division's budget and transferred to Utah Correctional Industries' budget. The Division will still be able to provide an individual a hard copy of the guidelines if requested; however, they will no longer print the guidelines in bulk.

♦ LOCAL GOVERNMENTS: There is not an anticipated cost or savings to local governments because this rule amendment removes the text regarding one of the medical categories for which a medical report form was previously required, and specifies that the "Functional Ability in Driving: Guidelines and Standards for Health Care Professionals" will no longer be printed for distribution. This rule change will not have an impact on local governments.

♦ SMALL BUSINESSES: There is not an anticipated cost or savings to small businesses because this rule amendment removes the text regarding one of the medical categories for which a medical report form was previously required, and specifies that the "Functional Ability in Driving: Guidelines and Standards for Health Care Professionals" will no longer be printed for distribution. The guidelines are made available to health care providers and members of the public via the Division's website. The guidelines were previously printed by Utah Correctional Industries and not a small business.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is an anticipated savings to persons other than small businesses, businesses, or local government entities because a person requesting a hard copy of "Functional Ability in Driving: Guidelines and Standards for Health Care Professionals" will no longer be required to pay a $5 fee to obtain a copy. The guidelines have been published to the Division's website for several years; however, prior to this rule change, if a member of the public requested a hard copy of the guidelines, they had the option to obtain a hard copy for a $5 fee. The language requiring payment of the $5 fee for a copy has been removed from this rule. The Division is unable to determine how many individuals have paid the $5 fee for a hard copy of the guidelines in the past because the information is not available; however, the Division anticipates the number would be relatively low due to the fact that most individuals would have accessed the information through the Division's website. Health care providers were not charged a $5 fee for a copy of the guidelines.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no direct compliance costs by affected persons to the Division. A driver may have costs for an office visit, testing, or the time needed for the health care professional to complete the necessary forms.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no non-small businesses that will be impacted by this rule amendment. This rule amendment removes the text regarding one of the medical categories for which a medical report form was previously required, and specifies that "Functional Ability in Driving: Guidelines And Standards for Health Care Professionals" will no longer be printed for distribution. Health care providers and members of the public are able to view the guidelines via the Division's website. The guidelines were previously printed for the Division by Utah Correctional Industries, and not a small or non-small business.

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

PUBLIC SAFETY
DRIVER LICENSE
CALVIN L RAMPTON COMPLEX
4501 S 2700 W 3RD FL
SALT LAKE CITY, UT 84119-5595
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Kim Gibb by phone at 801-556-8198, by FAX at 801-964-4482, or by Internet E-mail at kgibb@utah.gov

♦ Tara Zamora by phone at 801-964-4483, by FAX at 801-964-4482, or by Internet E-mail at tarazamora@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/16/2019

THIS RULE MAY BECOME EFFECTIVE ON: 12/24/2019

AUTHORIZED BY: Chris Caras, 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 are no non-small businesses that will be impacted by this rule amendment. This rule amendment removes the text regarding one of the medical categories for which a medical report form was previously required, and specifies the manner in which the "Functional Ability in Driving: Guidelines and Standards for Health Care Professionals" are be made available to health care providers and members of the public.

The head of department of Public Safety, Commissioner Jess Anderson, has reviewed and approved this fiscal analysis.

R708. Public Safety, Driver License.
R708-7. Functional Ability in Driving: Guidelines for Physicians.
R708-7-1. Purpose.

The purpose of this rule is to establish standards and guidelines to assist health care professionals in determining who may be impaired, the responsibilities of the health care professionals, and the driver's responsibilities regarding their health as it relates to highway safety.

R708-7-2. Authority.

This rule is authorized by Sections 53-3-224, 53-3-303, 53-3-304, and 49 CFR 391.43.

R708-7-3. Definitions.

(1) "Board" means the Driver License Medical Advisory Board created in Section 53-3-303.

(2) "Division" means the Driver License Division.

(3) "Health care professional" means a physician or surgeon licensed to practice medicine in the state, or when recommended by the Medical Advisory Board, may include other health care professionals licensed to conduct physical examinations in this state.

(4) "Impaired person" means a person who has a mental, emotional, or nonstable physical disability or disease that may impair the person's ability to exercise reasonable and ordinary control at all times over a motor vehicle while driving on the highway. It does not include a person having a nonprogressive or stable physical impairment that is objectively observable and that may be evaluated by a functional driving examination.

R708-7-4. Health and Driving.

(1) Every driver operating a vehicle is individually responsible for their health when driving. Each applicant for a Utah driver license shall be required to answer personal health questions related to driving safety in accordance with recommendations made by the Driver License Medical Advisory Board pursuant to the provisions of Section 53-3-303(8). If the applicant experiences a significant health problem, the applicant is required to take a [~~medical report~~] form furnished by the division to a health care professional who provides all requested information, including a safety assessment level that reflects the applicant's medical condition.

(2) The health care professional will be expected to discuss the applicant's health as it may affect driving abilities and to make special recommendations in unusual circumstances. Based upon a completed safety assessment, the division may deny driving privileges or issue a license with or without limitations in accordance with the standards described in this rule and lists, tables, and charts incorporated herein. Health care professionals have a responsibility to help reduce unsafe highway driving conditions by carefully applying these guidelines and standards, and by counseling with their patients about driving under medical constraints.

R708-7-5. Driver's Responsibilities.

(1) The 1979 Utah State Legislature has defined driver operating responsibilities in Section 53-3-303, related to physical, mental or emotional impairments of drivers. Drivers are:

(a) responsible to refrain from driving if there is uncertainty caused from having a physical, mental or emotional impairment which may affect driving safety;

(b) expected to seek competent medical evaluation and advice about the significance of any impairment that relates to driving vehicles safely; and

(c) responsible for reporting a "physical, mental or emotional impairment which may affect driving safety" to the Driver License Division in a timely manner.

R708-7-6. Health Care Professional's Responsibilities.

(1) Pursuant to Section 53-3-303, health care professionals shall:

(a) make reports to the division respecting impairments which may affect driving safety when requested by their patients. Nevertheless, the final responsibility for issuing a driver license remains with the director of the division;

(b) counsel their patients about how their condition affects safe driving. For example, if medication is prescribed for a patient which may cause changes in alertness or coordination, the health care professional shall advise the patient about how the medication can affect safe driving, and when it would be safe to operate a vehicle. Or, if a patient's visual acuity drops, the patient should similarly be advised, at least until corrective action has been taken to improve vision; and

(c) in accordance with Section 53-3-303(14)(b), be responsible for making available to their patients without reservation, their recommendations and appropriate information related to driving safety and responsibilities, whether defined by published guidelines or not.

R708-7-7. Driver License Medical Advisory Board.

(1) The Driver License Medical Advisory Board, as per Section 53-3-303, shall advise the director of the division and recommend written functional ability and safety assessment guidelines and standards for determining the physical, mental and emotional capabilities of applicants for licenses, appropriate to various driving abilities.

(2) In case of uncertainty of interpretation of these guidelines and standards, or in special circumstances, applicants may request a review of any division decision by a panel of board members. All of the actions of the director and board are subject to judicial review.

(3) In accordance with Section 53-3-303(8), the board shall administer the functional ability and safety assessment guidelines, which are intended to minimize such conflicts as the individual's desire to drive and the community's desire for highway safety.

R708-7-8. Persons Authorized to Complete Functional Ability Evaluation Medical Report Form.

(1) Physicians and surgeons licensed to practice medicine may complete the entire Functional Ability Evaluation Medical Report form.

(2) Nurse practitioners and physician assistants, and in accordance with 49 CFR 391.43, physician assistants, advanced practice nurses, doctors of chiropractic and other health care professionals, may perform physical examinations and report their findings on the Functional Ability Evaluation Medical Report form provided that:

(a) they are licensed by the state as health care professionals;

(b) the physical examination does not require advanced or complex diagnosis or treatment; and

(c) in the event that advanced or complex medical diagnostic analysis is required, the licensed health care professional, consistent with sound medical practices, will be expected to promptly refer the patient to the appropriate physician, surgeon or doctor of osteopathy for further evaluation and for completion of the functional ability evaluations certifications report in those categories.

R708-7-9. Safety Assessment Level Categories.

Functional ability of a driver to operate a vehicle safely may be affected by a wide range of physical, mental or emotional impairments. To simplify reporting and to make possible a comparison of relative risks and limitations, the Medical Advisory Board has adopted physical, emotional and behavioral safety assessment levels as defined in [~~12~~]11 separate categories, with multiple levels under each category.

R708-7-10. Use of the Safety Assessment Level.

(1) Health care professionals who evaluate their patients' health status for purposes of the patient obtaining a Utah driver license, shall report safety assessment levels on forms provided by the division.

(2) In assessing patient health and completing these report forms, health care professionals shall apply the standards and related information contained in the following lists, charts, and tables, which standards and guidelines are referred to in. [~~a booklet entitled, ~~]"Functional Ability in Driving: Guidelines And Standards for Health Care Professionals." Specific categories are:

(a) "Category A" - diabetes and other metabolic conditions; narrative listing and table;

(b) "Category B" - cardiovascular; narrative listing and table;

(c) "Category C" - pulmonary; narrative listing and table;

(d) "Category D" - neurologic; narrative listing and table;

(e) "Category E" - [~~epilepsy~~]seizures and other episodic conditions; narrative listing and table;

(f) "Category F" - learning, memory and communications; narrative listing and table;

(g) "Category G" - [~~psychiatric or emotional conditions~~]mental health; narrative listing and table;

(h) "Category H" - alcohol and other drugs; narrative listing and table;

(i) "Category I" - visual acuity; narrative listing and table;

(j) "Category J" - musculoskeletal abnormality or chronic medical debility; narrative listing and table; and

(k) "Category K" - alertness or sleep disorders; narrative listing and table;[~~ and~~

~~(L) "Category L" - hearing and balance; narrative listing and table.~~]

(3) [~~Copies of t~~]These guidelines are [~~printed in a booklet and distributed by the division in addition to being~~]published on the Driver License Division webpage. [~~These booklets may be obtained at no cost for health care professionals or $5 per booklet for all other individuals.~~]A [~~Copies~~]copy may be obtained in person at any Division office or by written request to the Driver License Division Medical Section at P.O. Box 144501, Salt Lake City, Utah 84114-4501.

(4) Report forms completed by a health care professional and received by the division are to be used as a screening tool in assessing an individual's ability to safely operate a motor vehicle.

(a) Some safety assessment levels as identified in the "Functional Ability in Driving: Guidelines And Standards for Health Care Professionals", may result in the division requesting an individual to complete a driver review, which may include a driving skills test in order to demonstrate the ability to safely operate a motor vehicle before determining whether the individual will maintain the privilege to drive. In some cases when a privilege to drive is granted, driving restrictions may be required in order to ensure public safety.

(b) A health care professional may also request that the division evaluate an individual's driving skill level at the health care professional's discretion.

(5) The division shall notify an individual that their privilege to drive is denied upon receipt of the following:

(a) a medical report that is completed in the categories A, B, C, D, E, F, G, H, J, or K, [~~or L,~~]for which the driver is assessed at a level "8" in accordance with the "Functional Ability in Driving: Guidelines And Standards for Health Care Professionals", or other documentation which indicates that the health care professional recommends that the individual does not drive; or

(b) a medical report that is completed in the category I for which the driver is assessed at a level "10" in accordance with the "Functional Ability in Driving: Guidelines And Standards for Health Care Professionals", or other documentation which indicates that the health care professional recommends that the individual does not drive.

(6) Upon receipt of a notice of denial of the privilege to drive, an individual may request a review of the division's decision by a panel of board members. All of the actions of the director and board are subject to judicial review.

KEY: administrative procedures, health care professionals, physicians
Date of Enactment or Last Substantive Amendment: [~~March 10, 2015~~]2019
Notice of Continuation: January 8, 2017
Authorizing, and Implemented or Interpreted Law: 53-3-224; 53-3-303; 53-3-304; 49 CFR 391.43

Public Safety, Driver License
R708-8
Review Process: Driver License Medical Section

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 44167
FILED: 10/30/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: These rule changes are being made to update the name of Functional Ability in Driving: Guidelines and Standards for Health Care Professionals, which was updated by the Medical Advisory Board. In addition, changes have been made to address which members of the Medical Advisory Board should receive information to make an educated recommendation in the field of knowledge.

SUMMARY OF THE RULE OR CHANGE: The Medical Advisory Board recommended that the Division of Driver License (Division) modify the name of the Functional Ability Guidelines to the Functional Ability in Driving: Guidelines and Standards for Health Care Professionals. This change requires the administrative rule to be updated to reflect the correct title. These amendments also clarify the manner in which the Division will coordinate meetings to review medical evidence in connection with a written request for review. In addition, changes were made to ease readability in Section R708-8-4 of this rule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-3-224 and Section 53-3-303

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There is no anticipated cost or savings to the state budget as a result of these rule amendment because the purpose of these amendments is to modify the title of the medical guidelines document, and clarify the manner in which the Division will coordinate meetings to review medical evidence in connection with a written request for review.
♦ LOCAL GOVERNMENTS: There is not an anticipated cost or savings to local governments as a result of these rule amendments because the purpose of these amendments is to modify the title of the medical guidelines document, and clarify the manner in which the Division will coordinate meetings to review medical evidence in connection with a written request for review.
♦ SMALL BUSINESSES: There is not an anticipated cost or savings to small businesses as a result of these rule amendments because the purpose of these amendments is to modify the title of the medical guidelines document, and clarify the manner in which the Division will coordinate meetings to review medical evidence in connection with a written request for review.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is not an anticipated cost or savings to persons other than small businesses, businesses, or local government entities as a result of these rule amendments because the purpose of these amendments is to modify the title of the medical guidelines document, and clarify the manner in which the Division will coordinate meetings to review medical evidence in connection with a written request for review.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is not an anticipated compliance cost for affected persons as a result of these rule amendments because the purpose of these amendments is to modify the title of the medical guidelines document, and clarify the manner in which the Division will coordinate meetings to review medical evidence in connection with a written request for review.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no non-small businesses that will be impacted by these rule amendments. The purpose of these amendments is to modify the title of the medical guidelines document, and clarify the manner in which the Division will coordinate meetings to review medical evidence in connection with a written request for review.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
PUBLIC SAFETY
DRIVER LICENSE
CALVIN L RAMPTON COMPLEX
4501 S 2700 W 3RD FL
SALT LAKE CITY, UT 84119-5595

or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Kim Gibb by phone at 801-556-8198, by FAX at 801-964-4482, or by Internet E-mail at kgibb@utah.gov
♦ Tara Zamora by phone at 801-964-4483, by FAX at 801-964-4482, or by Internet E-mail at tarazamora@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/16/2019

THIS RULE MAY BECOME EFFECTIVE ON: 12/24/2019

AUTHORIZED BY: Chris Caras, 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 are no non-small businesses that will be impacted by these rule amendments. These amendments only modify the title of the medical guidelines document, and clarify the manner in which the Division will coordinate meetings to review medical evidence in connection with a written request for review.

The head of department of Public Safety, Commissioner Jess Anderson, has reviewed and approved this fiscal analysis.

R708. Public Safety, Driver License.
R708-8. Review Process: Driver License Medical Section.
R708-8-1. Step One.

When competent evidence is received by the Department that a driver license applicant or licensee has physical, mental or emotional conditions which may impair his ability to safely operate a motor vehicle, the department may act to restrict or deny the applicant or licensee's driving privilege by applying the [~~Driver License Medical Advisory Board's Physician's Guidelines.~~]"Functional Ability in Driving: Guidelines and Standards for Health Care Professionals".

The decision to limit or deny privileges may also be based, in part, upon informal consultation between the department and one or more members of the Medical Advisory Board.

R708-8-2. Step Two.

53-3-303 requires the aggrieved applicant or licensee to notify this department of their desire for a medical review of the above action in writing within ten (10) days after the receipt of notice of such action.

R708-8-3. Step Three.

The Department (Driver License - Medical Section) upon receipt of a written request for review, will contact the Driver License Medical Advisory Board [~~chairperson for his recommendation regarding which board members should be contacted to constitute a panel. These members will then be contacted by the department~~]and will [~~be~~]give[~~n~~] a time, date and location within sixty (60) days after receipt of the request at which to meet in order to review the medical evidence. The Driver License Division Director or his designate shall also attend the review meeting. Unless otherwise agreed upon, such meetings will be held after regular office hours. The applicant or licensee will be notified by the department of the date on which their case will be reviewed and may submit any type of written, photographic or otherwise documented medical evidence in their behalf to the department for the panel's consideration. The applicant may be requested by the Driver License Medical Advisory Board to appear in person during the review in order to answer questions regarding their medical condition.

The panel shall review the matters and make written findings and conclusions pursuant to which the department shall affirm or modify its previous action. It shall be the policy of the department to adhere as closely as possible to the panel's recommendations regarding licensure of the applicant. The applicant or licensee shall be notified in writing at their last known address of the Department's decision to uphold or modify its original action as soon as possible following the review.

R708-8-4. Step Four.

If new[~~, relevant and heretofore undisclosed~~] medical evidence which is [~~germane~~]relevant to the applicant or licensee's case should develop following the panel's findings and conclusions, such evidence may be presented to the department and the applicant or licensee's case will be reviewed by the department in light of this evidence.

R708-8-5. Step Five.

If the applicant is further aggrieved by the department's decision following the above review process, they may appeal to the courts for judicial review as provided for by Section 53-3-224.

KEY: administrative procedures, legislative procedures
Date of Enactment or Last Substantive Amendment: [~~1992~~]2019
Notice of Continuation: January 8, 2017
Authorizing, and Implemented or Interpreted Law: 53-3-303; 53-3-224

Public Safety, Criminal Investigations and Technical Services, Criminal Identification
R722-300
Concealed Firearm Permit and Instructor Rule

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 44164
FILED: 10/30/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended as a result of the passage of H.B.17, passed during the 2019 General Session. The amendments in this rule are authorized under Section 53-5-707.6.

SUMMARY OF THE RULE OR CHANGE: The new language in this rule outlines the process by which the Bureau of Criminal Identification (BCI) and the Division of Substance Abuse and Mental Health (DSAMH) will create and distribute a firearm safety and suicide prevention video, and includes the manner in which a concealed firearm permit renewal applicant shall view the video and provide proof to BCI. In addition, the amended language clarifies that a photo submitted in connection with an in person or by mail application for a permit or an instructor permit must have the applicant's name written on the back side of the photo.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-5-707.6 and Sections 53-5-701 through 53-5-711 and Subsection 53-5-704(17)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: When completing the fiscal note for H.B. 17 (2019), BCI anticipated a possible cost of approximately $3,200 during FY19 for staff time related to producing the video. BCI indicated that the potential cost could be absorbed through BCI's existing budget.
♦ LOCAL GOVERNMENTS: BCI does not anticipate any costs or savings to local governments as a result of enactment of these rule amendments because the changes to this rule address the manner in which BCI and DSAMH are to create and distribute a firearm safety and suicide prevention video for renewal of a concealed firearm permit.
♦ SMALL BUSINESSES: BCI does not anticipate any costs or savings to small businesses as a result of enactment of these rule amendments because the changes to this rule address the manner in which BCI and DSAMH are to create and distribute a firearm safety and suicide prevention video for renewal of a concealed firearm permit.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: BCI does not anticipate any costs or savings to persons other than small businesses, businesses, or local government entities as a result of enactment of these rule amendments because the changes to this rule address the manner in which BCI and DSAMH are to create and distribute a firearm safety and suicide prevention video for renewal of a concealed firearm permit.

COMPLIANCE COSTS FOR AFFECTED PERSONS: BCI does not anticipate any compliance costs for affected persons because the firearm safety and suicide prevention video will be offered online in connection with an application for renewal of a concealed firearm permit, or in person at the BCI office in connection with an in person application for renewal of a concealed firearm permit. The video will take an applicant approximately 10 minutes to view.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: It is anticipated that there will not be a fiscal impact to businesses as a result of the amendments to this rule. This rule amendment addresses the manner in which BCI and DSAMH will coordinate to create and distribute a firearm safety and suicide prevention video for applicants seeking renewal of their concealed firearm permit to view in connection with their application.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
PUBLIC SAFETY
CRIMINAL INVESTIGATIONS AND TECHNICAL SERVICES, CRIMINAL IDENTIFICATION
3888 W 5400 S
TAYLORSVILLE, UT 84118
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Greg Willmore by phone at 801-965-4533, or by Internet E-mail at gwillmor@utah.gov

♦ Kim Gibb by phone at 801-556-8198, by FAX at 801-964-4482, or by Internet E-mail at kgibb@utah.gov
♦ Nicole Borgeson by phone at 801-281-5072, or by Internet E-mail at nshepherd@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/16/2019

THIS RULE MAY BECOME EFFECTIVE ON: 12/24/2019

AUTHORIZED BY: Greg Willmore, Division 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
There are no non-small businesses that will be impacted by this rule amendment. This rule amendment outlines the manner in which BCI and the DSAMH will coordinate to create and distribute a firearm safety and suicide prevention video for applicants seeking renewal of their concealed firearm permit to view in connection with their application.

The head of the Department of Public Safety, Jess L. Anderson, has reviewed and approved this fiscal analysis.

R722. Public Safety, Criminal Investigations and Technical Services, Criminal Identification.
R722-300. Concealed Firearm Permit and Instructor Rule.
R722-300-1. Purpose.

The purpose of this rule is to establish procedures whereby the bureau administers the Concealed Firearms Act in accordance with Title 53, Chapter 5, Part 7.

R722-300-2. Authority.

This rule is authorized by Subsection 53-5-704(17) which provides that the commissioner may make rules necessary to administer Title 53, Chapter 5, and Section 53-5-707.6.

R722-300-3. Definitions.

(1) Terms used in this rule are defined in Sections 53-5-702, 53-5-711, 76-10-501.

(2) In addition:

(a) "applicant" means an individual seeking to obtain or renew a permit, a temporary permit, an instructor certification, or an LEOJ permit from the bureau;

(b) "certified firearms instructor" means an individual certified by the bureau pursuant to Subsection 53-5-704(9) who can certify that an applicant meets the general firearm familiarity requirement under Subsection 53-5-704(8);

(c) " certified firearms instructor official seal" means a red, self-inking stamp containing the information required in Subsection 53-5-704(11)(a)(iii) which meets the design requirements described on the bureau's website;

(d) "crime of violence" means a crime under the laws of this state, any other state, the United States, or any district, possession, or territory of the United States which has, as an element, the use, threatened use, or attempted use of physical force or a dangerous weapon;

(e) "felony" means a crime under the laws of this state, any other state, the United States, or any district, possession, or territory of the United States for which the penalty is a term of imprisonment in excess of one year;

(f) "FBI" means the Federal Bureau of Investigation;

(g) "instructor certification" means a concealed firearm instructor certification issued by the bureau pursuant to Subsection 53-5-704(9);

(h) "LEOJ permit" means a permit to carry a concealed firearm issued to a judge or law enforcement official by the bureau pursuant to Section 53-5-711;

(i) "nonresident" means a person who:

(i) does not live in the state of Utah; or

(ii) has established a domicile outside Utah, as that term is defined in Section 41-1a-202.

(j) "NRA" means the National Rifle Association;

(k) "offense involving domestic violence" means a crime under the laws of this state, any other state, the United States, or any

district, possession, or territory of the United States involving any of the conduct described in:

(i) Section 77-36-1; or

(ii) 18 U.S.C Subsection 921(a)(33);

(l) "offense involving moral turpitude" means a crime under the laws of this state, any other state, the United States, or any district, possession, or territory of the United States involving conduct which:

(i) is done knowingly contrary to justice, honesty, or good morals;

(ii) has an element of falsification or fraud; or

(iii) contains an element of harm or injury directed to another person or another's property;

(m) "offense involving the use of alcohol" means a crime under the laws of this state, any other state, the United States, or any district, possession, or territory of the United States involving any of the conduct described in:

(i) Section 32B-4-409;

(ii) Section 32B-4-421;

(iii) Subsection 41-6a-501(2) related to the use of alcohol;

(iv) Section 41-6a-526; or

(v) Section 76-10-528 related to carrying a dangerous weapon while under the influence of alcohol;

(n) "offense involving the unlawful use of narcotics or controlled substances" means:

(i) any offense listed in Subsection 41-6a-501(2) involving the use of a controlled substance;

(ii) any offense involving the use or possession of any controlled substance found in Title 58, Chapters 37, 37a, or 37b; or

(iii) the crime of carrying a dangerous weapon while under the influence of a controlled substance pursuant to Section 76-10-528;

(o) "past pattern of behavior involving unlawful violence" means verifiable incidents, regardless of whether there has been an arrest or conviction, that would lead a reasonable person to believe that an individual has a violent nature and would be a danger to themselves or others, including an attempt or threat to commit suicide;

(p) "permit" means a permit to carry a concealed firearm issued by the bureau pursuant to Section 53-5-704 or 53-5-704.5;

(q) "POST" means the Utah Department of Public Safety, Division of Peace Officer Standards and Training;

(r) "revocation" means the permanent deprivation of a permit, instructor certification, or certificate of qualification, however revocation does not preclude an individual from applying for a new permit, instructor certification, or certificate of qualification if the reason for revocation no longer exists;

(s) "suspension" means the temporary deprivation, for a specified period of time, of a permit, instructor certification, or certificate of qualification; and

(t) "temporary permit" means a temporary permit to carry a concealed firearm issued by the bureau pursuant to Section 53-5-705.

R722-300-4. Application for a Permit to Carry a Concealed Firearm.

(1)(a) An applicant seeking to obtain a permit shall submit a completed permit application packet to the bureau.

(i) The bureau may not accept an application more than 60 days prior to the applicant's date of permit eligibility.

(b) The permit application packet shall include:

(i) a written application form provided by the bureau with the address of the applicant's permanent residence;

(ii) a photocopy of a state-issued driver license or identification card;

(iii) one recent color photograph of passport quality which contains the applicant's name written on the back of the photograph, unless the applicant submitted a photo which meets these requirements to the bureau within the previous three years;

(iv) one completed FBI applicant fingerprint card (Form FD-258) with the applicant's legible fingerprints;

(v) non-refundable fees as required under Sections 53-5-707, 53-5-707.5, and 53-10-108, and a fee for services provided by the FBI to conduct a federal background check as provided in Subsections 53-5-707(6)(a) and 53-5-707.5(4)(a), in the form of cash, check, money order, or credit card;

(vi) evidence indicating that the applicant has general familiarity with the types of firearms to be concealed as required by Subsection 53-5-704(6)(d);

(vii) any mitigating information that the applicant wishes the bureau to consider when determining whether the applicant meets the qualifications set forth in Subsection 53-5-704(2)(a); and

(viii) a copy of the applicant's current concealed firearm or weapon permit or provisional concealed firearm or weapon permit issued by the applicant's state of residency pursuant to Subsections 53-5-704(4)(a) and 53-5-704.5(3)(a), unless the applicant is an active duty service member who presents orders requiring the active duty service member to report for duty in Utah or an active duty service member spouse who presents the active duty service member's orders requiring the service member to report for duty in Utah.

(2) An applicant may establish evidence of general familiarity with the types of firearms to be concealed as required in Subsection 53-5-704(6)(d) by submitting a signed certificate, issued within one year of the date of the application, bearing a certified firearms instructor's official seal, certifying that the applicant has completed the required firearms course of instruction established by the bureau.

(3) If the applicant is employed as a law enforcement officer, the applicant:

(a) may not be required to pay the application fee; and

(b) may establish evidence of general familiarity with the types of firearms to be concealed as required in Subsection 53-5-704(6)(d) by submitting documentation from a law enforcement agency located within the state of Utah indicating that the applicant has successfully completed the firearm qualification requirements of that agency within the last five years.

(4)(a) Upon receipt of a complete permit application packet, the bureau shall conduct a thorough background investigation to determine if the applicant meets the requirements found in Subsections 53-5-704(2) and (3).

(b) The background investigation shall consist of the following:

(i) sending the fingerprint card to the FBI for a review of the applicant's criminal history record pursuant to Section 53-5-706; and

(ii) verifying the accuracy of the information provided in the application packet through a search of local, state and national records which may include, but is not limited to, the following:

(A) the Utah Computerized Criminal History database;

(B) the National Crime Information Center database;

(C) the Utah Law Enforcement Information Network;

(D) state driver license records;

(E) the Utah Statewide Warrants System;

(F) juvenile court criminal history files;

(G) expungement records maintained by the bureau;

(H) the National Instant Background Check System;

(I) the Utah Gun Check Inquiry Database;

(J) Immigration and Customs Enforcement records; and

(K) Utah Department of Corrections Offender Tracking System; and

(L) the Mental Gun Restrict Database.

(5)(a) If the background check indicates that an applicant does not meet the qualifications set forth in Subsection 53-5-704(2)(a), the bureau shall consider any mitigating circumstances submitted by the applicant.

(b) If the applicant does not meet the qualifications set forth in Subsection 53-5-704(2)(a) because the applicant has been convicted of a crime, the bureau may find that mitigating circumstances exist if the applicant was not convicted of a registerable sex offense, as defined in Subsection 77-41-102(17) and the following time periods have elapsed from the date the applicant was convicted or released from incarceration, parole, or probation, whichever occurred last:

(i) five years in the case of a class A misdemeanor;

(ii) four years in the case of a class B misdemeanor; or

(iii) three years in the case of any other misdemeanor or infraction.

(c) Notwithstanding any other provision, the bureau may not grant a permit if the applicant does not meet the qualifications in Subsection 53-5-704(2)(a)(viii).

(6)(a) If the bureau determines that the applicant meets the requirements found in Subsections 53-5-704(2) and 53-5-704(3), the bureau shall issue a permit to the applicant within 60 days.

(b) The permit shall be mailed to the applicant at the address listed on the application.

(7)(a) If the bureau determines that the applicant does not meet the requirements found in Subsections 53-5-704(2), 53-5-704(3), and 53-5-704(4), the bureau shall mail a letter of denial to the applicant, return receipt requested.

(b) The denial letter shall state the reasons for denial and indicate that the applicant has a right to request a review hearing before the board by filing a petition for review within 60 days as provided in Subsection 53-5-704(16).

R722-300-5. Application for a Concealed Firearms Instructor Certification.

(1)(a) An applicant seeking to be certified as a Utah concealed firearms instructor shall submit a completed instructor certification application packet to the bureau.

(b) The instructor certification application packet shall include:

(i) a written instructor certification application form provided by the bureau with the applicant's residential or physical address and public contact information;

(ii) a photocopy of a state-issued driver license or identification card;

(iii) one recent color photograph of passport quality which contains the applicant's name written on the back of the photograph, unless the applicant submitted a photo which meets these requirements to the bureau within the previous five years;

(iv) a photocopy of a valid Utah concealed firearm permit;

(v) a non-refundable processing fee in the form of cash, check, money order, or credit card;

(vi) evidence that the applicant has completed a firearm instructor training course from the NRA or POST, or received training equivalent to one of these courses, as required by Subsection 53-5-704(9)(a)(iii); and

(vii) evidence that the applicant has completed the course of instruction provided under the direction of the bureau and passed the certification test provided in Subsection 53-5-704(9)(c), within one year of the date of the application.

(2)(a) An applicant who has not completed a firearm instructor training course from the NRA or POST, may meet the requirement in R722-300-5(1)(b)(v) by providing evidence that the applicant has completed a firearm instructor training course that is at least eight hours long and includes the following training components:

(i) instruction and demonstration on:

(A) the safe, effective, and proficient use and handling of firearms;

(B) firearm draw strokes;

(C) the safe loading, unloading and storage of firearms;

(D) the parts and operation of a handgun;

(E) firearm ammunition and ammunition malfunctions, including misfires, hang fires, squib loads, and defensive/protection ammunition vs. practice ammunition;

(F) firearm malfunctions, including failure to fire, failure to eject, feed way stoppage and failure to go into battery;

(G) shooting fundamentals, including shooter's stance, etc.; and

(H) firearm range safety rules; and

(ii) a practical exercise with a proficiency qualification course consisting of not less than 30 rounds and a required score of 80% or greater to pass.

(b) The evidence required in R722-300-5(2)(a) shall include a copy of the:

(i) course completion certificate showing the date the course was completed and the number of training hours completed; and

(ii) training curriculum for the course completed.

(3)(a) If the bureau determines that an applicant meets the requirements found in Subsection 53-5-704(9), the bureau shall issue an instructor certification to the applicant.

(b) An instructor certification identification card shall be mailed to the applicant at the residential or physical address listed on the application.

(4)(a) If the bureau determines that the applicant does not meet the requirements found in Subsection 53-5-704(9), the bureau shall mail a denial letter to the applicant, return receipt requested.

(b) The denial letter shall state the reasons for denial and indicate that the applicant has a right to request a review hearing before the board by filing a petition for review within 60 days as provided in Subsection 53-5-704(16).

R722-300-6. Renewal of a Concealed Firearms Permit or Concealed Firearms Instructor Certification.

(1)(a) An applicant seeking to renew a permit or an instructor certification shall submit a completed renewal packet to the bureau.

(b) The renewal packet for an applicant seeking to renew a permit shall include:

(i) a written or electronic renewal form provided by the bureau with the current address of the applicant's permanent residence;

(ii) a copy of the applicant's current concealed firearm or weapon permit or provisional concealed firearm or weapon permit issued by the applicant's state of residency pursuant to Subsections 53-5-704(4)(a) and 53-5-704.5(3)(a), unless the applicant is an active duty service member who presents orders requiring the active duty service member to report for duty in Utah or an active duty service member spouse who presents the active duty service member's orders requiring the service member to report for duty in Utah;

(iii) one recent color photograph of passport quality[~~which contains the applicant's name written on the back of the photograph~~], unless the licensee submitted a photo which meets these requirements to the bureau within the previous five years;[~~and~~]

(A) if the renewal application is not submitted electronically, the photo must contain the applicant's name written on the back of the photograph; and

(iv) a non-refundable processing fee in the form of cash, check, money order, or credit card, unless the applicant is an active duty service member who presents orders requiring the active duty service member to report for duty in Utah or an active duty service member spouse who presents the active duty service member's orders requiring the service member to report for duty in Utah.

(v) Prior to renewal of a permit, an applicant shall watch the firearm safety and suicide prevention video described in Section R722-300-12, and affirm that he has watched the video in connection with the application process.

(c) The renewal packet for an applicant seeking to renew an instructor certification shall include:

(i) a written or electronic renewal form provided by the bureau with the applicant's residential or physical address and the applicant's public contact information;

(ii) one recent color photograph of passport quality[~~which contains the applicant's name written on the back of the photograph~~], unless the applicant submitted a photo which meets these requirements to the bureau within the previous three years;

(A) if the renewal application is not submitted electronically, the photo must contain the applicant's name written on the back of the photograph;

(iii) a photocopy of a valid Utah concealed firearm permit;

(iv) a non-refundable processing fee in the form of cash, check, money order, or credit card; and

(v) evidence that the instructor has completed the course of instruction provided under the direction of the bureau and passed the certification test provided in Subsection 53-5-704(9)(c), within one year of the date of the application.

(A) The course of instruction for instructor certification renewal may be completed in person or via an online training course administered by the bureau.

(2) A renewal packet may be submitted no earlier than 60 days prior to the expiration of a current permit or certification.

(3)(a) A fee will be collected for renewal packets submitted on a permit or an instructor certification that has been expired for more than 30 days but less than one year.

(b) Renewal packets for a permit or an instructor certification which has been expired for more than one year will not be accepted and the applicant will have to re-apply for a permit or an instructor certification.

(4) When renewing a permit or an instructor certification the bureau shall conduct a background investigation.

(5)(a) If the bureau determines that the applicant meets the requirements to renew a permit or an instructor certification, the bureau shall mail the renewed permit or instructor certification identification card to the applicant.

(b) The renewed permit or instructor certification identification card shall be mailed to the applicant at the address listed on the renewal application.

(6)(a) If the bureau determines that the applicant does not meet the requirements to renew a permit or an instructor certification, the bureau shall mail a denial letter to the applicant, return receipt requested.

(b) The denial letter shall state the reasons for denial and indicate that the applicant has a right to request a review hearing before the board by filing a petition for review within 60 days as provided in Subsection 53-5-704(16).

(7) Provisional permits issued pursuant to Section 53-5-704.5 may not be renewed.

R722-300-7. Application for a Temporary Permit to Carry a Concealed Firearm.

(1)(a) In order to obtain a temporary permit an applicant shall submit a completed permit application packet to the bureau as provided by R722-300-4.

(b) In addition, the applicant shall provide written documentation to establish extenuating circumstances which would justify the need for a temporary permit to carry a concealed firearm.

(2) When reviewing an application for a temporary permit to carry a concealed firearm the bureau shall conduct the same background investigation as provided in R722-300-4.

(3)(a) If the bureau finds that extenuating circumstances exist to justify the need for a temporary permit, the bureau shall issue a temporary permit to the applicant.

(b) The temporary permit shall be mailed to the applicant at the address listed on the application.

(4) If the bureau finds that the applicant is otherwise eligible to receive a permit under Section 53-5-704, the bureau shall request that the applicant surrender the temporary permit prior to the issuance of the permit under Section 53-5-704.

R722-300-8. LEOJ Permits.

(1)(a) In order to obtain an LEOJ permit under Section 53-5-711, an applicant shall submit a completed permit application packet to the bureau as provided by R722-300-4.

(b) In addition, the applicant shall provide written documentation to establish to the satisfaction of the bureau that:

(i) the applicant is a law enforcement official or judge as defined in Section 53-5-711; and

(ii) that the applicant has completed the course of training required by Subsection 53-5-711(2)(b).

(2) When reviewing an application for an LEOJ permit the bureau shall conduct the same background investigation as if the individual were seeking a permit.

(3)(a) If the bureau finds that the applicant meets the requirements found in Subsection 53-5-711(2), the bureau shall issue an LEOJ permit to the applicant.

(b) The LEOJ permit shall be mailed to the applicant at the address listed on the application.

(4)(a) If the bureau finds that the applicant does not meet the requirements found in Subsection 53-5-711(2), the bureau shall mail a denial letter to the applicant, return receipt requested.

(b) The denial letter shall state the reasons for denial and indicate that the applicant has a right to request a review hearing before the board by filing a petition for review within 60 days as provided in Subsection 53-5-704(16).

(5)(a) When the bureau receives notice that an LEOJ permit holder resigns or is terminated from a position as a law enforcement official or judge, the LEOJ permit will be revoked and the bureau shall issue a permit, pursuant to Section 53-5-704, if the former LEOJ permit holder otherwise meets the requirements found in that section.

(b) If a former LEOJ permit holder gains new employment as a law enforcement official or judge, the bureau shall re-issue an LEOJ permit.

R722-300-9. Suspension or Revocation of a Permit to Carry a Concealed Firearm, Concealed Firearms Instructor Certification, or an LEOJ Permit.

(1) A permit may be suspended or revoked for any of the following reasons:

(a) the bureau determines that the permit holder does not meet the requirements found in Subsection 53-5-704(2);

(b) the bureau determines that the permit holder has committed a violation under Subsection 53-5-704(3); or

(c) the permit holder knowingly and willfully provided false information on an application for a permit, or a renewal of a permit.

(2) An instructor certification may be suspended or revoked for any of the following reasons:

(a) the bureau determines that the instructor has become ineligible to possess a firearm under Section 76-10-506 or federal law; or

(b) the instructor knowingly and willfully provided false information to the bureau.

(3) An LEOJ permit may be suspended or revoked for any of the following reasons:

(a) the bureau determines that an LEOJ permit holder is no longer employed as a law enforcement official or judge; or

(b) an LEOJ permit holder fails to provide proof of annual requalification by November 30 of each year as required by Section 53-5-711.

(4)(a) If the bureau suspends or revokes a permit, an instructor certification, or an LEOJ permit, the bureau shall mail a notice of agency action to the permit holder, instructor, or LEOJ permit holder, return receipt requested.

(b) The notice of agency action shall state the reasons for suspension or revocation and indicate that the permit holder, instructor, or LEOJ permit holder has a right to request a review hearing before the board by filing a petition for review within 60 days as provided in Subsection 53-5-704(16).

R722-300-10. Review Hearing Before the Board.

(1)(a) Review hearings before the board shall be informal and be conducted according to the provisions in Section 63G-4-203.

(b) At the hearing, the bureau shall establish the allegations contained in the notice of agency action by a preponderance of the evidence.

(2) Upon request, an applicant, permit holder, instructor, or LEOJ permit holder who is seeking review before the board is entitled to review all the materials in the bureau's file upon which the bureau intends to use in the hearing.

(3) In accordance with Section 63G-4-209 the board may enter an order of default against an applicant, permit holder, instructor, or LEOJ permit holder who fails to appear at the hearing.

(4) Within 30 days of the date of the hearing the board shall issue an order which:

(a) states the board's decision and the reasons for the board's decision; and

(b) indicates that the applicant, permit holder, instructor, or LEOJ permit holder has a right to appeal the decision of the board by filing a petition for judicial review within 30 days as provided in Section 63G-4-402.

R722-300-11. Records Access.

(1)(a) Information, except for the name of certified instructors and their public contact information, provided to the bureau by an applicant shall be considered "private" in accordance with Subsection 63G-2-302(2)(d).

(b) The name of certified instructors and their public contact information shall be considered public information.

(2) Information gathered by the bureau and placed in an applicant's file shall be considered "protected" in accordance with Subsection 63G-2-305(9).

(3) When a permit has been issued to an applicant, the names, address, telephone numbers, dates of birth, and Social Security numbers of the applicant are protected records pursuant to Section 53-5-708.

R722-300-12. Firearm Safety and Suicide Prevention Video.

(1) The bureau shall meet with the Division of Substance Abuse and Mental Health as needed to approve concepts and scripts for a firearm safety and suicide prevention video in order to ensure compliance with provisions set forth in Section 53-5-707.6.

(a) Once concepts and scripts are established, the bureau and the Division of Substance Abuse and Mental Health will produce the video and make it available for viewing.

(3) The firearm safety and suicide prevention video will be made available to an applicant seeking renewal of their concealed firearm permit:

(a) online, in connection with an electronic or mail in renewal; or

(b) at the bureau's office location for an applicant who appears in person to renew.

KEY: concealed firearm permits, concealed firearm permit instructors
Date of Enactment or Last Substantive Amendment: [~~January 10, 2018~~]2019
Notice of Continuation: May 12, 2015
Authorizing, and Implemented or Interpreted Law: 53-5-701 through 53-5-711; 53-5-707.6

Public Safety, Criminal Investigations and Technical Services, Criminal Identification
R722-400
Silver Alert Notification System

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 44163
FILED: 10/30/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is required as a result of the passage of H.B. 215, passed in the 2019 General Session. This rule is authorized under Section 53-10-704. The purpose of this rule is to establish policies, procedures and a timeline for the request of a Silver Alert, activation of the Silver Alert Notification System, duration of the Silver Alert, and cancellation of a Silver Alert.

SUMMARY OF THE RULE OR CHANGE: This rule outlines the process by which a law enforcement officer or agency may request a Silver Alert through the State Bureau of Criminal Identification (BCI), activation of the Silver Alert Notification System by the Utah Department of Transportation (UDOT), the duration of a Silver Alert once requested by a law enforcement officer or agency, and the process for cancellation of a Silver Alert.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-10-704

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: When completing the fiscal note for H.B. 215 (2019), BCI anticipated a possible cost of approximately $4,900 to implement technology system programming changes.
♦ LOCAL GOVERNMENTS: BCI does not anticipate any costs or savings to local governments as a result of the enactment of this administrative rule because law enforcement officers and agencies that will request a Silver Alert will do so using their existing UCJIS (Utah Criminal Justice Information System) login. No additional equipment or programming will be required in order for them to submit a request.
♦ SMALL BUSINESSES: BCI does not anticipate any costs or savings to small businesses as a result of the enactment of this administrative rule because small businesses will not be submitting a request for a Silver Alert using the system, nor will they be fiscally impacted by law enforcement's use of the system. The system will be used to alert drivers on the highways when an endangered adult is missing in their geographical area.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: BCI does not anticipate any costs or savings to persons other than small businesses, businesses or local government entities as a result of the enactment of this administrative rule because they will not be submitting a request for a Silver Alert using the system, nor will they be fiscally impacted by law enforcement's use of the system. The system will be used to alert drivers on the highways when an endangered adult is missing in their geographical area.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are not any compliance costs for affected persons. There will not be a charge assessed to the missing endangered adult or their family members as a result of an activation of the Silver Alert Notification System for the purposes of assisting with expediting locating them. Law enforcement officers and agencies will utilize the existing UCJIS system to request a Silver Alert, so there will not be compliance costs associated in order for them to submit a request for a Silver Alert.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are not any businesses in Utah that will be impacted as a result of the enactment of this rule. The rule establishes policies, procedures, and a timeline for the request of a Silver Alert, activation of the Silver Alert Notification System, duration of the Silver Alert, and cancellation of a Silver Alert. These functions will be performed by law enforcement, BCI, and UDOT.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
PUBLIC SAFETY
CRIMINAL INVESTIGATIONS AND TECHNICAL SERVICES, CRIMINAL IDENTIFICATION
3888 W 5400 S
TAYLORSVILLE, UT 84118
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Greg Willmore by phone at 801-965-4533, or by Internet E-mail at gwillmor@utah.gov
♦ Kim Gibb by phone at 801-556-8198, by FAX at 801-964-4482, or by Internet E-mail at kgibb@utah.gov
♦ Nicole Borgeson by phone at 801-281-5072, or by Internet E-mail at nshepherd@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/16/2019

THIS RULE MAY BECOME EFFECTIVE ON: 12/24/2019

AUTHORIZED BY: Greg Willmore, Division 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

There are no non-small businesses in Utah that will be impacted as a result of the enactment of this rule. This rule establishes policies, procedures, and a timeline for the request of a Silver Alert, activation of the Silver Alert Notification System, duration of the Silver Alert, and cancellation of a Silver Alert. These functions will be performed by law enforcement, BCI, and UDOT.

The head of the Department of Public Safety, Jess L. Anderson, has reviewed and approved this fiscal analysis.

R722. Public Safety, Criminal Investigations and Technical Services, Criminal Identification.

R722-400. Silver Alert Notification System.

R722-400-1. Purpose.

The purpose of this rule is to establish policies, procedures and a timeline for the request of a Silver Alert, activation of the Silver Alert Notification System, duration of the Silver Alert, and cancellation of a Silver Alert.

R722-400-2. Authority.

This rule is authorized by Section 53-10-704.

R722-400-3. Definitions

(1) Terms used in this rule are defined in Section 53-10-702.

(2) In addition:

(a) "BCI" means the State Bureau of Criminal Identification;

(b) "UCJIS" means the Utah Criminal Justice Information System; and

(c) "UDOT" means the Utah Department of Transportation.

R722-400-4. Request for a Silver Alert.

(1) In order to submit a request for a Silver Alert following the report of a missing endangered adult, a law enforcement officer or agency shall:

(a) determine that the missing individual meets the criteria to be designated as an endangered adult as defined in Section 53-10-702;

(b) identify the specific area in which the endangered adult was last seen; and

(c) contact BCI using the UCJIS system.

(2) Upon receipt of a request for a Silver Alert from a law enforcement officer or agency, BCI shall transmit the information to UDOT to activate the Silver Alert Notification System.

(3) UDOT shall activate the electronic signs based on the last know location of the individual that was reported via UCJIS.

(4) UDOT will transmit the alert notification on the UDOT electronic signs for 8 hours during the day, or 16 hours if the alert is issued after 7:00 p.m., unless the alert is cancelled earlier in accordance with Section R722-400-5.

(5) The law enforcement officer or agency may contact the BCI Help Desk to request that electronic signs be activated in locations other than the last know location of the individual.

(6) The BCI Help Desk may enter, modify, or cancel an alert if the agency is unable to do such.

R722-400-5. Cancellation of a Silver Alert.

(1) In order to cancel a Silver Alert, a law enforcement officer or agency shall cancel the alert via UCJIS upon determination the alert is no longer needed.

KEY: Silver Alert, missing endangered adult, missing
Date of Enactment or Last Substantive Amendment: 2019
Authorizing, and Implemented or Interpreted Law: 53-10-704

Public Safety, Peace Officer Standards and Training
R728-409
Suspension, Revocation, or Relinquishment of Certification

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 44155
FILED: 10/29/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose for the amendments to this rule is to clarify the definitions for "sexual conduct" and "sexual image" for the purposes of potential action that could be taken with regards to a police officer or dispatcher certification.

SUMMARY OF THE RULE OR CHANGE: These rule changes clarify the definitions for "sexual conduct" and "sexual image" for the purposes of potential action that could be taken with regards to a police officer or dispatcher certification.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-6-211 and Section 53-6-211.5 and Section 53-6-309 and Section 53-6-311

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The Division of Peace Office Standards and Training (POST) does not anticipate any costs or savings to the state budget as a result of these administrative rule changes because these changes only clarify the definitions for "sexual conduct" and "sexual image" for the purposes of potential action that could be taken with regards to a police officer or dispatcher certification.
♦ LOCAL GOVERNMENTS: POST does not anticipate any costs or savings to local governments as a result of these administrative rule changes because these changes only clarify the definitions for "sexual conduct" and "sexual image" for the purposes of potential action that could be taken with regards to a police officer or dispatcher certification.
♦ SMALL BUSINESSES: POST does not anticipate any costs or savings to small businesses as a result of these administrative rule changes because these changes only clarify the definitions for "sexual conduct" and "sexual image" for the purposes of potential action that could be taken with regards to a police officer or dispatcher certification.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: POST does not anticipate any costs or savings to persons other than small businesses, businesses, or local government entities as a result of these administrative rule changes because these changes only clarify the definitions for "sexual conduct" and "sexual image" for the purposes of potential action that could be taken with regards to a police officer or dispatcher certification.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated compliance costs for affected persons as a result of these administrative rule changes because these changes only clarify the definitions for "sexual conduct" and "sexual image" for the purposes of potential action that could be taken with regards to a police officer or dispatcher certification.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no non-small businesses in Utah that will be impacted as a result of enactment of these rule changes. These rule changes clarify the definitions for "sexual conduct" and "sexual image" for the purposes of potential action that could be taken with regards to a police officer or dispatcher certification.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
PUBLIC SAFETY
PEACE OFFICER STANDARDS AND TRAINING
410 W 9800 S
SANDY, UT 84070
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Kim Gibb by phone at 801-556-8198, by FAX at 801-964-4482, or by Internet E-mail at kgibb@utah.gov
♦ Scott Stephenson by phone at 801-256-2322, by FAX at 801-256-0600, or by Internet E-mail at sstephen@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/16/2019

THIS RULE MAY BECOME EFFECTIVE ON: 12/24/2019

AUTHORIZED BY: Scott Stephenson, 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
There are no non-small businesses in Utah that will be impacted as a result of enactment of these rule changes. These rule changes clarify the definitions for "sexual conduct" and "sexual image" for the purposes of potential action that could be taken with regards to a police officer or dispatcher certification.

The head of the Department of Public Safety, Jess L. Anderson, has reviewed and approved this fiscal analysis.

R728. Public Safety, Peace Officer Standards and Training.
R728-409. Suspension, Revocation, or Relinquishment of Certification.
R728-409-1. Authority.

This rule is authorized by Subsection 53-6-105(1)(k), which provides that the director shall, with the advice of the council, make rules necessary to administer Title 53 Chapter 6.

R728-409-2. Purpose.

The purpose of this rule is to establish procedures for the suspension, revocation, or relinquishment of a respondent's certification.

R728-409-3. Definitions.

(1) Terms used in this rule are defined in Section 53-6-102.

(2) In addition:

(a) "ALJ" means an administrative law judge who conducts administrative hearings as described in Subsections 53-6-211(3) and 53-6-309(3);

(b) "On duty" means that a respondent is:

(i) actively engaged in any of the duties of the respondent's employment as a peace officer or dispatcher;

(ii) receiving compensation for activities related to the respondent's employment as a peace officer or dispatcher;

(iii) on the property of a law enforcement facility, correctional facility or dispatch center;

(iv) in a law enforcement vehicle which is located in a public place; or

(v) in a public place and is wearing a badge or uniform, authorized by the respondent's employer, which readily identifies the wearer as a peace officer or dispatcher;

(c) "Relinquish" means the permanent deprivation of the respondent's certification, to include any and all peace officer or dispatcher certifications, pursuant to Section 53-6-211.5 or 53-6-311, which precludes a respondent from:

(i) admission into a training program conducted by, or under the approval of, the division; or

(ii) reinstatement or restoration of the respondent's certification by the division;

(d) "Respondent" means a peace officer or dispatcher against whom the division has initiated an investigation or adjudicative proceeding under Sections 53-6-211 or 53-6-309;

(e) "Revocation" means the permanent deprivation of a respondent's certification, to include any and all peace officer or dispatcher certifications, which precludes a respondent from:

(i) admission into a training program conducted by, or under the approval of, the division; or

(ii) reinstatement or restoration of the respondent's certification by the division;

(f) "Sexual conduct" means:

(i) the touching of the anus, buttocks or any part of the genitals of a person, or the touching of the breast of a female, whether or not through clothing, with the intent to arouse or gratify the sexual desire of any person regardless of the sex of any participant; [~~and~~]or

(ii) the sending, transmitting, giving, exchanging, selling, soliciting, or posting, through any means, a sexual image as defined in Subsection R728-409-3(2)(g), by a certified peace officer or dispatcher:

(A) while on duty;

(B) while off duty if the intimate image depicts the certified peace officer or dispatcher in uniform or depicts any official peace officer or dispatcher symbols, insignia, or clothing;

(C) to a certified peace officer or dispatcher while the recipient is on duty and the transmitting peace officer has reason to believe the recipient is on duty at the time of the transmission; or

(D) to an individual with whom the peace officer's relationship is based primarily upon the performance of the peace officer's law enforcement duties, including a confidential informant, witness, or victim, whether or not the intimate image depicts the certified peace officer in uniform.

(iii) "Sexual conduct" does not mean sending, transmitting, giving, or posting a sexual image for a legitimate law enforcement purpose.

(g) "Sexual image" means an image of:

(i) exposed human male or female genitals or pubic area, with less than an opaque covering;

(ii) a female breast with less than an opaque covering or any portion of the female breast below the top of the areola;

(iii) an individual engaged in any sexually explicit conduct; or

(iv) a visual depiction of nudity or partial nudity.

[~~(g)~~](h) "Suspension" means the temporary deprivation of a respondent's certification, to include any and all peace officer or dispatcher certifications; and,

[~~(h)~~](i) "Traffic offense" means all offenses in the following parts:

(i) 41-6a, Part 3, Traffic-Control Devices;

(ii) 41-6a, Part 6, Speed Restrictions;

(iii) 41-6a, Part 7, Driving on Right Side of Highway and Passing;

(iv) 41-6a, Part 8, Turning and Signaling for Turns;

(v) 41-6a, Part 9, Right-of-Way;

(vi) 41-6a, Part 10, Pedestrians' Rights and Duties;

(vii) 41-6a, Part 11, Bicycles, Regulations of Operation;

(viii) 41-6a, Part 12, Railroad Trains, Railroad Grade Crossings, and Safety Zones;

(ix) 41-6a, Part 13, School Buses and School Bus Parking Zones;

(x) 41-6a, Part 14, Stopping, Standing, and Parking;

(xi) 41-6a, Part 15, Special Vehicles;

(xii) 41-6a, Part 16, Vehicle Equipment;

(xiii) 41-6a, Part 17, Miscellaneous Rules; and

(xiv) 41-6a, Part 18, Motor Vehicle Safety Belt Usage Act.

R728-409-4. Investigative Procedure.

(1) The division shall initiate an investigation when it receives information from any reliable source that a violation of Subsections 53-6-211(1) or 53-6-309(1) has occurred, including when:

(a) A respondent is charged with or convicted of a crime;

(b) There is evidence a respondent has engaged in conduct which is a criminal act under law, but which has not been criminally charged or where criminal prosecution is not anticipated;

(c) A respondent's employer notifies the division that the respondent has been investigated, disciplined, terminated, retired or resigned as a result of conduct in violation of Subsections 53-6-211(1) or 53-6-309(1);

(d) A person makes a complaint regarding a violation of Subsections 53-6-211(1) or 53-6-309(1) and there is independent evidence to support the complaint;

(e) violation of Subsections 53-6-211(1) or 53-6-309(1) is reported in the media and there is independent evidence to confirm that the conduct occurred; or

(f) A background investigation indicates that a respondent has engaged in conduct in violation of Subsections 53-6-211(1) or 53-6-309(1).

(2) The division may not investigate conduct which is limited to:

(a) A violation of an employer's policy or procedure; or

(b) Sexual activity protected under the right of privacy recognized by the United States Supreme Court in Lawrence v. Texas, 539 U.S. 558 (2003).

(3) A person seeking to file a complaint against a respondent may be asked to sign a written statement, detailing the incident and swearing to the accuracy of the statement after being advised that providing a false statement may result in prosecution under Section 76-8-511, Falsification of Government Record.

(4) An investigator from the division shall be assigned to investigate the complaint and ensure that the investigation is fully documented in the investigative case file.

(5)(a) If a respondent under investigation is employed as peace officer or dispatcher, the division shall notify the respondent's employer concerning the complaint or investigation, unless the nature of the complaint would make such a course of action impractical.

(b) The division shall keep a record of the date the employer and the respondent are notified.

(6) The division shall refer any complaints of a criminal nature against a respondent to the appropriate law enforcement agency having jurisdiction over the crime for investigation and prosecution if such a referral has not already been made.

(7) If the respondent's employer has an open and active investigation, the division may wait until the employer has completed its investigation before taking action unless the division determines it is not in the public's best interest to delay the investigation.

(8) The division may use the information gathered by the respondent's employer in its investigation.

(9) The division shall take action based on the actual conduct of the respondent as determined by the division's own independent investigation, not on any findings or sanctions issued by the respondent's employer or the court.

(10) Witnesses and other evidence may be subpoenaed during an investigation pursuant to Sections 53-6-210 and 53-6-308.

(11) If ordinary investigative procedures cannot resolve the facts at issue, a respondent may be requested to submit to a polygraph examination.

(12) The director may immediately suspend a respondent's certification as provided in Section 63G-4-502 if the director believes it is necessary to ensure the safety and welfare of the public, the continued public trust or professionalism of law enforcement.

(13) Once the investigation is concluded, the division shall determine whether there is sufficient evidence to proceed with an adjudicative proceeding.

(14) If the division determines there is insufficient evidence to find that a respondent engaged in conduct in violation of Subsections 53-6-211(1) or 53-6-309(1), the director shall issue a letter to the respondent indicating that the investigation has been concluded and that the division shall take no action.

R728-409-5. Purpose of Adjudicative Proceedings.

(1) The purpose of an adjudicative proceeding is to determine whether there is sufficient evidence to find that the respondent engaged in the conduct alleged in the Notice of Agency Action by clear and convincing evidence and whether such conduct falls within the grounds for administrative action enumerated in Subsections 53-6-211(1) or 53-6-309(1).

(2) All adjudicative proceedings initiated by the division for the purpose of suspending or revoking a respondent's certification shall be formal proceedings as provided by Section 63G-4-202.

R728-409-6. Commencement of Adjudicative Proceedings - Filing of the Notice of Agency Action.

(1) Except as provided by 63G-4-502, all adjudicative proceedings initiated by the division for the purpose of suspending or revoking a respondent's certification shall be commenced by the filing of a Notice of Agency Action.

(2) The Notice of Agency Action shall be signed by the director and comply with the requirements of Section 63G-4-201.

(3) The Notice of Agency Action shall be filed with the division and a copy sent to the respondent by certified mail.

R728-409-7. Responsive Pleadings.

(1) The respondent shall file a written response with the division, signed by the respondent or the respondent's attorney, within 30 days of the mailing date of the Notice of Agency Action.

(2) The written response shall comply with the requirements in Section 63G-4-204.

R728-409-8. Hearing Waivers.

(1) Once a Notice of Agency Action has been issued, the division shall send a hearing waiver form to the respondent.

(2) The respondent shall have 30 days from the mailing date of the Notice of Agency Action to sign a hearing waiver.

(3)(a) If the respondent does not waive the right to a hearing before the ALJ, the adjudicative proceeding will continue.

(b) The period of time in which the respondent must file a responsive pleading to the Notice of Agency Action is not extended if the respondent does not sign a hearing waiver.

(4) If the respondent signs a hearing waiver and files it with the division, the matter shall be heard at the next regularly scheduled council meeting.

R728-409-9. Default.

(1) The ALJ may enter an order of default against a respondent if:

(a) The respondent fails to file the response required in rule R728-409-7; or

(b) The respondent fails to attend or participate in the hearing.

(2) The order of default shall include a statement of the grounds for default and shall indicate that the matter will be heard at the next regularly scheduled council meeting.

(3) The order of default shall be filed with the division and a copy sent to the respondent by certified mail.

(4)(a) The respondent may seek to set aside the default order by filing a motion within 90 days from the date of the order of default as provided in Section 63G-4-209.

(b) The ALJ may set aside an order of default for good cause shown.

R728-409-10. Scheduling a Hearing before the ALJ.

(1)(a) If the division receives a responsive pleading from the respondent, a notice containing the location, date and time for the hearing shall be issued by the division.

(b) The notice of hearing shall be filed with the division and a copy sent to the respondent by certified mail.

(2) The hearing shall be held within a reasonable time after service of the responsive pleading unless a later scheduling is ordered by the ALJ, or mutually agreed upon by the respondent and the division.

R728-409-11. Discovery and Subpoenas.

(1)(a) In formal POST adjudicative proceedings parties may conduct only limited discovery.

(b) A respondent's right to discovery does not extend to interrogatories, requests for admissions, request for the production of documents, request for the inspection of items, or depositions.

(2) Upon request, the respondent is entitled to a copy of the materials contained in the division's investigative file that the division intends to use in the adjudicative proceeding.

(3)(a) The disclosure of all discovery materials is subject to the provisions in the Government Records Access and Management Act, Section 63G-2-101 et seq.

(b) The division may charge a fee for discovery in accordance with Section 63G-2-203.

(4) Subpoenas and other orders to secure the attendance of witnesses or the production of evidence for adjudicative proceedings shall be issued by the division pursuant to Sections 53-6-210 and 53-6-308, by the ALJ when requested by any party, or by the ALJ on his own motion pursuant to Section 63G-4-205.

R728-409-12. Hearing Procedures.

(1) All hearings shall be conducted by the ALJ in accordance with Section 63G-4-206.

(2)(a) At the hearing, the respondent has the right to be represented by an attorney.

(b) Legal counsel will not be provided to the respondent by the division and all costs associated with representation will be the sole responsibility of the respondent.

R728-409-13. ALJ Decision.

(1) Within 30 days from the date a hearing is held, the ALJ shall sign and issue a written decision, which includes a statement of:

(a) The ALJ's findings of fact based exclusively on the evidence of record in the adjudicative hearing or on facts officially noted;

(b) The ALJ's conclusions of law; and

(c) The reasons for the ALJ's decision.

(2) If the ALJ determines there is sufficient evidence to find that the respondent engaged in conduct in violation of Subsections 53-6-211(1) or 53-6-309(1), the ALJ's decision shall indicate that the matter will be heard at the next regularly scheduled council meeting.

(3) If the ALJ determines there is insufficient evidence to find that the respondent engaged in conduct in violation of Subsections 53-6-211(1) or 53-6-309(1), the matter shall be dismissed.

(4) The ALJ's decision shall be filed with the division and a copy sent to the respondent by certified mail.

R728-409-14. Action by the Council.

(1) If the respondent waives the right to a hearing with an ALJ, there has been an order of default, or a findings of fact is issued by the ALJ, the division shall present the matter to the council at its next regularly scheduled meeting.

(2) The division shall notify the respondent of the date, time, and location of the council meeting.

(3)(a) Prior to the council meeting, the division shall provide the council with the pleadings contained in the administrative file.

(b) The division shall also provide the council with any written information or comments provided by the respondent's employer.

(c) Any written comments from the respondent's employer should include discipline administered by the respondent's employer as a result of any violation of Section 56-6-211.

(4) At the council meeting the respondent or the respondent's attorney may address the council regarding whether the respondent's certification should be suspended or revoked.

(5) The council shall review the matter and determine whether suspension or revocation of the respondent's certification is appropriate based upon the facts of the case and the POST Disciplinary Guidelines which were adopted on June 7, 2010 and amended on June 14, 2018.

R728-409-15. Final Order.

(1) After the council has decided the matter, the council chairperson shall issue a final order within 30 days of the council meeting.

(2) The final order shall indicate the action taken by the council with regards to the respondent's certification and shall include information on the appeal process outlined in R728-409-16.

(3) The council's action shall be effective on the date that the final order is signed by the chairperson.

(4)(a) The final order shall be filed with the division.

(b) A copy of the final order shall be sent to:

(i) the respondent by certified mail; and

(ii) the respondent's employer by regular mail, if the respondent is employed as peace officer or dispatcher.

(c) The action taken by the council shall be entered into the International Association of Directors of Law Enforcement Standards and Training National Peace Officer De-Certification database, if the respondent is a peace officer.

R728-409-16. Judicial Review.

(1) A respondent may obtain judicial review of the council's action by filing a petition for judicial review with the Utah Court of Appeals within 30 days after the date that the final order is issued by the council chairperson.

(2) The petition must meet all requirements specified in Sections 63G-4-401 and 63G-4-403.

R728-409-17. Relinquishment Procedures.

(1) At any time after the division receives a complaint that a respondent has engaged in conduct described in Subsections 53-6-211(1) or 53-6-309(1), a respondent who is the subject of the complaint may voluntarily relinquish the respondent's certification by submitting a Relinquishment of Certification form to the division.

(2) The Relinquishment of Certification form must be signed by the respondent and notarized.

(3) As soon as the division receives a properly executed Relinquishment of Certification form, the respondent's certification shall be terminated and the respondent will no longer be a certified peace officer or dispatcher.

(4) Upon the termination of the respondent's certification, the division's investigation into the complaint and any adjudicative proceedings will cease.

(5) Notice of the termination of the respondent's certification shall be provided to:

(a) The respondent;

(b) The respondent's employer if the respondent is employed as a peace officer or dispatcher; and

(c) The National Peace Officer De-Certification database administered by the International Association of Directors of Law Enforcement Standards and Training, if the respondent is a peace officer.

R728-409-18. Reporting Violations of 53-6-211(1) or 53-6-309(1).

(1) A chief, sheriff or administrative officer of an agency employing a certified peace officer or dispatcher who is made aware of an allegation against a certified peace officer or dispatcher employed by that agency as provided in Subsection 53-6-211(6)or 53-6-309(6)shall report the allegation to the division within 90 days if the allegation is found to be true.

(2) A chief, sheriff or administrative officer of an agency employing a certified peace officer or dispatcher who fails to report to the division within 90 days an allegation that is found to be true shall appear before the council at the next regularly scheduled council meeting to explain why the allegation was not reported.

KEY: certifications, investigations, revocations, relinquishments
Date of Enactment or Last Substantive Amendment: [~~June 24,~~] 2019
Notice of Continuation: December 19, 2016
Authorizing, and Implemented or Interpreted Law: 53-6-211; 53-6-211.5; 53-6-309; 53-6-311

Transportation, Motor Carrier
R909-2
Utah Size and Weight Rule

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 44146
FILED: 10/22/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: These proposed changes are technical corrections. The changes are needed to conform this rule to the realities of the affected industries and the state's highway system.

SUMMARY OF THE RULE OR CHANGE: Major changes in this proposal include: Section R909-2-7 changes accommodate variable load axles in common use in the motor carrier industries. Section R909-2-13 changes make this rule's holiday travel restrictions on motor carriers consistent with public highway travel patterns on holidays that occur or are observed on Mondays.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 72-1-201

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The Department of Transportation (Department) estimates that the state will not experience a

fiscal impact related to these proposed amendments because state and federal law already require it to regulate and inspect motor carrier commercial vehicles. These proposed amendments will not change the amount of work required for the Department to meet its responsibilities.
♦ LOCAL GOVERNMENTS: These proposed amendments will not have any fiscal impact on local governments because they do not require anything of local governments. Regulating the motor carrier industry in the subject matter areas of this rule is solely within state jurisdiction.
♦ SMALL BUSINESSES: The Department's research suggests that these proposed changes will not lead to compliance costs to the average impacted motor carrier regardless of size. These proposed changes are technical corrections to this rule. The Department does not believe these corrections will cost the average motor carrier anything.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The Department estimates these proposed changes will not lead to any fiscal impact on persons other than small businesses, businesses, or local government entities because this rule regulates motor carrier industries and these proposed changes will not lead to a fiscal impact on motor carriers.

COMPLIANCE COSTS FOR AFFECTED PERSONS: These proposed amendments will not lead to compliance costs to the average impacted motor carrier because they do not place any additional requirements on these carriers.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: These proposed amendments will not have a fiscal impact on businesses.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ James Palmer by phone at 801-965-4000, by FAX at 801-965-4338, or by Internet E-mail at jimpalmer@utah.gov
♦ Linda Hull by phone at 801-965-4253, or by Internet E-mail at lhull@utah.gov
♦ Lori Edwards by phone at 801-965-4048, or by Internet E-mail at loriedwards@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/16/2019

THIS RULE MAY BECOME EFFECTIVE ON: 12/23/2019

AUTHORIZED BY: Carlos Braceras, Executive Director

Appendix 1: Regulatory Impact Summary Table*

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

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

Appendix 2: Regulatory Impact to Small and Non-Small Businesses
1) The Department of Transportation (Department) estimates that the general freight trucking, motor vehicle towing, and road transport industries in Utah include the businesses most likely to experience a material fiscal impact resulting from these proposed amendments. This fiscal impact may be positive or negative, depending upon the specific business or type of business impacted and how the Department defines fiscal impact. These industries are comprised of establishments federal regulations define as motor carriers.

2) The Department of Workforce Services (DWS) Firm Find Data includes data about the industries regulated by this administrative rule, which includes 1,158 establishments identified by the NAICS industry codes 484110, 484121, 484122, 488410, and 488490.

3) Of these 1,158 firms, 34 are non-small businesses; 1,124 are small businesses, as defined by Subsection 63G-3-102(19). For a complete list of these 1,158 firms, contact the Department.

4) The Department's research suggests these proposed amendments will not lead to compliance costs to the average impacted motor carrier.

5) These proposed changes are technical corrections to this rule. The Department does not believe these corrections will cost the average motor carrier anything.

6) Carlos Braceras, Executive Director of the Department, has reviewed and approved this fiscal analysis.

R909. Transportation, Motor Carrier.
R909-2. Utah Size and Weight Rule.
R909-2-1. Purpose and Applicability.

The purpose of this rule is to protect and preserve Utah's highway infrastructure, enhance safety, and facilitate commerce. All commercial motor vehicle operators, and motor carriers engaged in the movement of over dimensional and overweight vehicles and loads must comply with permit conditions as specified in the Utah Size and Weight rule. These conditions apply to all over dimensional vehicles and loads.

R909-2-2. Authority.

This rule is enacted under the authority of Sections 41-1a-231, 41-1a-1206, 72-1-201, 72-7-402, 72-7-404, 72-7-406, 72-7-407, 72-9-301, and 72-9-502.

R909-2-3. Definitions.

(1) "Appurtenance" as defined in CFR 23-658 and Section 72-7-402.

(2) "Articulated vehicle" consists of two or more vehicles that are connected by a joint that can pivot.

(3) "Automobile transporter" is any vehicle combination designed and used for the transport of assembled highway vehicles, including truck camper units. An automobile transporter shall not be prohibited from the transport of cargo or general freight on a backhaul, so long as it complies with weight limitations for a truck tractor and semitrailer combination.

(4) "Bridge formula" is a bridge protection formula used by federal and state governments to regulate the amount of weight that can be put on each of a vehicle's axles, or the number of axles, and the distance between the axles or group of axles must be to legally carry a given weight.

(5) "Cargo or cargo carrying length" means the total length of a combination of trailers or load measured from the foremost of the first trailer or load to the rearmost of the last trailer or load including all coupling devices.

(6) "CSA" means the Compliance, Safety, Accountability program administered by the Federal Motor Carrier safety Administration, where they work together with state partners and industry to further reduce commercial motor vehicle crashes, fatalities, and injuries on our nation's highways.

(7) "Commercial vehicle" is as defined in Utah Code Section 72-9-102.

(8) "Daylight" means one-half hour before sunrise and one-half hour after sunset.

(9) "Department" means the Utah Department of Transportation.

(10) "Divisible load" a load that can reasonably be dismantled or disassembled and does not meet the definition of non-divisible as defined in this section.

(11) "Division" means the Motor Carrier Division.

(12) "Drawbar" means the connection between two vehicles, measured from box to box or frame to frame or actual drawbar, one of which is towing or drawing the other on a highway.

(13) "Dromedary unit" is a truck-tractor capable of carrying a load independent of a trailer. Units manufactured prior to December 1, 1982 are exempt as a truck-trailer.

(14) "Emergency vehicle" means a vehicle designed to be used under emergency conditions: to transport personnel and equipment; and to support the suppression of fires and mitigation of other hazardous situations.

(15) "Fixed axle" means an axle that is not steerable, self-steering or retractable.

(16) "Flagger" is a person that is trained to direct traffic using signs or flags to aid the over-dimensional load or vehicles in the safe movement along the highway as designated on the over-dimensional load permit.

(17) "Full trailer" a vehicle without motive power designed for carrying property and for being drawn by a motor vehicle and constructed so that no part of its weight rests upon the towing vehicle.

(18) "High-risk motor carrier" is a carrier that is:

(a) above the threshold in the Crash or Fatigue or Unsafe BASIC that is greater than or equal to 85%, plus one other BASIC at or above the "all other" motor carrier threshold; or

(b) a motor carrier with any four or more BASIC's at or above the "all other" motor carrier threshold.

(19) "Highway" any public road, street, alley, lane, court, place, viaduct, tunnel, culvert, bridge, or structure laid out or erected for public use, or dedicated or abandoned to the public, or made public in an action for the partition of real property, including the entire area within the right-of-way.

(20) "Implement of husbandry" means every vehicle designed or adapted or used exclusively for an agricultural operation and only incidentally operated or moved upon the highways.

(21) "Incidental" means transportation that occurs occasionally or by chance but does not exceed a distance of 20 miles.

(22) "Interstate system" means any highway designated as an interstate or freeway. For the purpose of this rule: I-15, I-215, I-80, I-70, US 89 between I-84 and I-15 and SR 201 between I-15 and I-80 will be considered interstate.

(23) "Laden" means carrying a load.

(24) "Longer combination vehicle" or an LCV is a combination of truck, truck tractor, semi-trailer and trailers, which exceeds legal dimensions and operates on highways by permit for transporting divisible loads.

(25) "Longer combination vehicle authority" means an authorization given to a specific company to exceed standard permitted length allowances for vehicle configuration on pre-approved routes.

(26) "Manufactured home" a transportable factory-built housing unit constructed on or after June 15, 1976, in one or more sections, and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems.

(27) "Manufactured mobile home" means a transportable factory-built housing unit built prior to June 15, 1976, in accordance

with a state mobile home code, which existed prior to the Federal Manufactured Housing and Safety Standards Act.

(28) "Motor carrier" as defined in Utah Code Section 72-9-102.

(29) "MVR" means motor vehicle record.

(30) "MUTCD" means Manual on Uniform Traffic Control Devices.

(31) "Multi-trip" means two or more daily or a minimum of 10 weekly trips in the proximity of a port-of-entry.

(32) "Natural gas vehicle" means the vehicle's engine is fueled primarily by natural gas.

(33) "Non-divisible" any load or vehicle exceeding applicable length, width, or height or weight limits which, if separated into smaller loads or vehicles would:

(a) compromise the intended use of the load or vehicle;

(b) destroy the value of the load or vehicle; or

(c) require more than eight work hours to dismantle using appropriate equipment.

(34) "Out-of-service" is a condition where a motor vehicle, because of mechanical condition or loading, is considered imminently hazardous and likely to cause an accident or breakdown; or where a driver violation renders a commercial vehicle operator unqualified to drive.

(35) "Pole trailer" every vehicle without motive power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach, or pole, or by being boomed or otherwise secured to the towing vehicle, and is ordinarily used for transporting long or irregular shaped loads such as poles, pipes, or structural members generally capable of sustaining themselves as beams between the supporting connections.

(36) "Port-of-entry by-pass permit" allows a motor carrier a temporary permit that would allow by-pass of a designated port of entry.

(37) "Quad axle group" means a group of four consecutive fixed axles.

(38) "Recreational vehicle" is a vehicle or vehicles that are driven solely as family or personal conveyances for non-commercial purposes.

(39) "Retractable axle" is an axle which can be mechanically raised and lowered by the driver of the vehicle, but which may not have its weight-bearing capacity mechanically regulated.

(40) "Rocky mountain doubles" a tractor and two trailers, consisting of a long and a short trailer.

(41) "Saddle mount" means a truck or tractor towing other vehicles with the front axle of each towed vehicle mounted on top of the frame of the proceeding vehicle or vehicles.

(42) "Secondary highway" is all other routes not designated as interstate or freeway. Two-lane, two-way highways are synonymous with secondary highways.

(43) "Semi trailer" means every vehicle without motive power designed for carrying property and for being drawn by a motor vehicle and constructed so that some part of its weight and its load rests on or is carried by another vehicle.

(44) "Special event" means the movement of an over-dimensional load or vehicle.

(45) "Special mobile equipment" or an SME means a vehicle or vehicles exempt from registration that is not designed or used primarily for the transportation of persons or property; is not designed to operate in traffic; and is only incidentally operated or moved over the highways.

(46) "Special truck equipment" or STE means a vehicle by nature of design that cannot meet the non-divisible weight allowances such as cement pump trucks, well boring trucks, or cranes with a lift capacity of five or more tons.

(47) "Spread axle" is two single axles that exceed 96 inches apart.

(48) "Tandem axle" means two axles spaced not less than 40 inches nor more than 96 inches apart and having at least one common point of weight suspension.

(49) "Tillerman/Steerman" is an individual who steers any axle of an articulated trailer.

(50) "Towaway trailer transporter combination" means a combination of vehicles consisting of a trailer transporter towing unit and 2 trailers or semitrailers.

(51) "Trailer transporter towing unit" means a power unit that is not used to carry property when operating in a towaway trailer transporter combination.

(52) "Tridem axle" means any three consecutive axles whose extreme centers are not more than 144 inches apart, and are individually attached to or articulated from, or both, a common attachment to the vehicle including a connecting mechanism designed to equalize the load between axles.

(53) "Triple trailer" means a tractor and three trailers of approximately equal length.

(54) "Truck" means any self-propelled motor vehicle, except a truck tractor, designed or used for the transportation of property, laden or un-laden.

(55) "Truck tractor" means a motor vehicle designed and used primarily for drawing other vehicles and not constructed to carry a load other than a part of the weight of the vehicle and load that is drawn.

(56) "Trunnion axle" an axle configuration with two individual axles mounted in the same transverse plane, with four tires on each axle.

(57) "Trunnion axle group" two or more consecutive trunnion axles that are attached to the vehicle by a weight equalizing suspension system and whose consecutive centers are more than 40 inches, but not more than 96 inches apart.

(58) "Turnpike doubles" means a tractor and two trailers of equal length.

(59) "UCR" means Unified Carrier registration.

(60) "Un-laden" means a vehicle is not carrying a load.

(61) "Variable load suspension axle" or VLS is an axle that can be adjusted mechanically to various weight bearing capacities and can also be mechanically raised and lowered.

(62) "Vehicle" every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices used exclusively upon rails or tracks.

R909-2-4. Legal Size Vehicle Dimensions.

(1) Maximum legal vehicle dimensions, laden and un-laden, that may be operated without special permits on Utah Highways:

(a) height: 14 feet

(b) width: 8 feet 6 inches; and

(c) length: See Table 1 Legal Size Vehicle Dimensions

TABLE 1

Legal Size Vehicle Dimensions

Vehicle	Maximum Length	Comments
Single motor vehicle	45 feet	Measured from bumper to bumper.
Semi-Trailer	53 feet	A trailer may not exceed 53 feet.
Double trailer combinations	61 feet	Measured from the front of the first trailer to the rear of the second trailer, excluding appurtenances. There is no overall length limitation on a truck tractor and double trailer combination when the trailers coupled together measure 61 feet or less.
Stinger-steered Automobile Transporter	80 feet or less	Stinger-steered Automobile transports are measured from bumper to bumper and may have a front overhang of 4 feet or less and a rear overhang of 6 feet or less, with a maximum vehicle length of 80 feet or less (excluding overhangs).
Saddle Mount	97 feet	This will allow a maximum of three saddle mount vehicles, one power unit and one full mount.
Truck trailer combination	65 feet	Measured from bumper to bumper.
Dromedary unit	65 feet	Truck tractor, unloaded box deck and trailer. A dromedary unit is considered a truck trailer configuration whether laden or un-laden.
	75 feet	Dromedary units transporting Class 1 Explosives or munitions related Security materials, as specified by the Department of Defense, are allowed up to 75 feet of overall length on the interstates. US highways and reasonable access routes without requiring a permit. Reasonable access means to the Interstate or US highway system.
All other combinations including recreational vehicles	65 feet	Measured from bumper to bumper.
Overhang	3 feet front 6 feet rear	Overhang may not carry any load extending more than 3 feet beyond the front of the power unit or more than 6 feet beyond the rear of the bed or body of the vehicle.
Drawbar	15 feet	The drawbar or other connection between any two vehicles, one of which is towing or drawing the other on a highway, may not exceed 15 feet in length from one vehicle to the other, measured from box to box or frame to frame, except in the case of a connection between any two vehicles transporting poles, pipe, machinery, or structural material that cannot be dismembered when transported upon a pole trailer.
Commercial delivery of light and medium duty	82 feet or less	Consisting of a trailer transporter towing unit and 2 trailers or semitrailers with a total weight not to exceed 26,000 lbs; and in trailers which the trailers or semitrailers carry no property and constitute inventory property of a manufacturer, distributer, or dealer of such trailers or semitrailers, may have an overall length limitation of 82 feet or less on a towaway trailer transporter combination.

R909-2-5. Legal Weight Limitations.

(1) The maximum gross and axle weight limitations are noted in Table 2 and may not be operated at more than:

TABLE 2

Maximum Gross and Axle Weight Limitations

Single Wheel	10,500 pounds
Single Axle	20,000 pounds
Tandem Axle	34,000 pounds
Tridem Axle	must comply with bridge formula
Gross Vehicle Weight	80,000 pounds

(2) An overweight permit must be obtained to authorize any exception to the maximum weight limitations listed in Table 2.

(3) The weight limitation in Table 2 does not apply to a covered heavy-duty tow and recovery vehicle.

(4) Emergency vehicles may exceed the weight limits (up to a maximum gross vehicle weight of 86,000 pounds) of less than - 24,000 pounds on a single steering axle; 33,500 pounds on a single drive axle; 62,000 pounds on a tandem axle; or 52,000 pounds on a tandem rear drive steer axle.

(5) A natural gas vehicle may exceed any vehicle weight limit (up to a maximum gross vehicle weight of 82,000 pounds) by any amount that is equal to the difference between: the weight of the vehicle attributable to the natural gas tank and fueling system carried by that vehicle; and the weight of a comparable diesel tank and fueling system.

R909-2-6. Tire Load Provisions.

(1) Except for steering axles, self-steering VLS and retractable axles, or wide based tires, that are 14 inches wide or greater as indicated by the manufacturer's sidewall rating, all axles weighing more than 11,000 pounds shall have at least four tires per axle.

(a) For example: A tridem axle group that is designed for equalized weight distribution, equipped with single tires less than 14 inches in width, will be allowed 33,000 pounds. A tandem axle group that is designed for equalized weight distribution, equipped with single tires less than 14 inches in width will be allowed 22,000 pounds. All axles in the group must be duals or super singles to be allowed maximum weight.

(2) In circumstances where weight limitations are based on tire width, the manufacturer's size, as indicated on the sidewall will be used to determine maximum tire width:

(a) for non-permitted or legal vehicles, no tire shall exceed 600 pounds per inch of tire width as indicated on the sidewall;

(b) tire loading on vehicles requiring a Divisible overweight permit shall not exceed 500 pounds per inch of tire width for tires 11 inches wide or greater;

(c) tires that are greater than 11 inches but less than 14 inches shall have a weight limit not to exceed 5500 pounds;

(d) tires less than 11 inches wide shall not exceed 450 pounds per inch of tire width; and

(e) except as provided in R909-2-6, single axle loading shall not exceed 20,000 pounds, and tandem axle loading shall not exceed 34,000 pounds.

R909-2-7. [~~Variable Load~~]Axle[s] Provisions.

[~~(1) Vehicles with variable load axles are limited as follows:~~]

(1[~~a~~]) no more than three fixed axles shall be allowed in any group;

(2) Vehicles with variable load axles are limited as follows:

(a[~~b~~]) retractable or variable load suspension axles installed after January 1990 shall be self-steering[~~, on power units or~~], provided however, variable load suspension axles that are within sixty (60) inches of a drive axle or are within (60) inches of a trailer axle, need not be self-steering.[~~, when augmenting a tridem group on trailers~~];

(i) Non-divisible loads may be exempt from these restrictions upon written approval from the division.

(b[~~e~~]) no axle in a group with a retractable or VLS axle shall exceed legal or bridge formula weight requirements, or the manufacturer's tire rating; and

(c[~~d~~]) Controls for raising or lowering retractable or VLS axles may be located in the cab of the power unit. The pressure regulator valve shall be positioned outside of the cab and be inaccessible from the driver's compartment.

R909-2-8. General Oversize or Overweight Provisions.

(1) Except when entering on Northbound I-15 at the St. George Port of Entry, Westbound I-80 at the Echo Port of Entry, and Eastbound I-80 at the Wendover Port of Entry, the appropriate permit must be obtained prior to operating within the State of Utah.

(2) Each oversize or overweight permit shall be carried in the vehicle or combination vehicles.

(a) The permit may be in paper or electronic format.

(3) The conditions that must be met to obtain an oversize or overweight permit are:

(a) the motor carrier complies with the financial responsibility obligations;

(b) the vehicle or vehicles must be properly registered;

(c) the driver or drivers are properly licensed with appropriate endorsements;

(d) the motor carrier complies with the Federal Motor Carrier Safety Regulations;

(e) the motor carrier complies with the Hazardous Material Regulations; and

(f) the motor carrier complies with the Unified Carrier Registration or UCR as required.

(4) Exception. Length limitations do not apply to combinations of vehicles operated at night by a public utility when required for emergency repair of public service facilities or properties, or when operated with an oversize or overweight permit.

(5) Liability of permittee. The applicant or permittee, as a condition for obtaining an oversize permit, shall assume all responsibility for crashes, including injury to any persons or damage to public or private property caused by their operations.

(6) Indemnity clause. The applicant or permittee must agree to indemnify and hold harmless the department from any and all claims resulting directly or indirectly from the operation and transportation of vehicles or combination of vehicles operating under an oversize or overweight permit.

R909-2-9. Transfer or Replacement of Permits.

(1) Division personnel may transfer permits from one vehicle to another up to two times per permit for a fee under the following conditions:

(a) annual and semi-annual permits may be transferred to another unit within the same company;

(b) the customer has sold or purchased a vehicle;

(c) lease changes from one company to another by providing evidence of permit ownership; or

(d) the vehicle has become disabled.

(2) A transfer permit will be issued with the same expiration date as the original permit.

R909-2-10. Permit Revocation, Suspension and Confiscation.

(1) Violations of any permit that may result in the revocation, suspension or confiscation of the permit include, but are not limited to:

(a) speeding or driving faster than the posted speed limit or the speed indicated on the permit;

(b) lane travel;

(c) weather;

(d) load securement;

(e) violations of the Federal Motor Carrier Safety Regulations; and

(f) violations of the Hazardous Material Regulations.

(2) Before a vehicle can be moved, it must be made legal, properly permitted and all the out-of-service violations corrected.

(3) Patterns of non-compliance at a carrier level may result in the following actions:

(a) civil penalties;

(b) suspension or revocation of permit privileges; or

(c) an order to cease and desist operations.

R909-2-11. Weather Travel Restrictions.

(1) No carrier shall operate a longer combination vehicle (LCV), a tractor trailer combination more than 81 feet cargo carrying length, or a truck and two-trailer combination more than 92 feet measured bumper to bumper, when the following conditions exist:

(a) wind more than 45 m.p.h.;

(b) any accumulation of snow and ice on the roadway; or

(c) visibility less than 1,000 feet.

(2) No carrier shall operate an oversize vehicle or load more than 10 feet wide, 105 feet long, 10 feet front or rear overhang when the following conditions exist:

(a) any accumulation of snow and ice on the roadway; or

(b) visibility less than 1,000 feet.

R909-2-12. Curfew Congestion Restrictions.

(1) Unless otherwise authorized, travel is prohibited for loads or vehicles more than 10 feet wide, 105 feet overall length, and 14 feet 6 inches in height, Monday thru Friday between 6 a.m. and 9 a.m. and between 3:30 p.m. and 6 p.m. mountain time on the following highways:

(a) all highways south of Perry Willard Interchange, I-15, Exit #357;

(b) all highways in Weber, Davis, and Salt Lake Counties;

(c) all highways in Utah County north of I-15, Exit #261;

(d) SR 68, North of mile post 16 in Utah County;

(e) I-80 East side of Salt Lake County mile post 139 to mile post 101 on the West side of Salt Lake County; and

(f) I-84 west of mile post 91.

(2) The division may authorize exceptions to the curfew congestion restrictions based on mitigating circumstances.

R909-2-13. Holiday Travel Restrictions.

(1) Travel is prohibited for loads more than 10 feet wide, 105 feet overall length, and 14 feet 6 inches in height during the following holidays:

(a) Christmas Day;

(b) New Year's Day;

(c) Memorial Day;

(d) Independence Day;

(e) Labor Day; and

(f) Thanksgiving Day.

(2) [~~Monday holidays and Monday observed h~~]Holiday restrictions begin at 2:00 p.m. the day before the holiday and extend to sunrise the day after the holiday.

(3) Monday holidays and Monday observed holiday restrictions begin at 2:00 p.m. through midnight on the Friday prior to the holiday. Normal travel may resume from sunrise on Saturday through Sunday at midnight. Monday holiday restriction continues at 12:01 a.m. on Monday and ends Tuesday at sunrise.

(4[~~3~~]) The division may authorize exceptions to the holiday travel restriction based on mitigating circumstances.

(5[**4**]) The division may prohibit movement of oversize loads during days of anticipated high traffic volume such as those that occur during [~~hunting seasons, ~~]other holidays, weather conditions, or special events.

R909-2-14. Night Time Restrictions.

(1) Loads exceeding the following dimensions are restricted to daylight hours except as provided in R909-2-15:

(a) 14 feet 6 inches high;

(b) 10 feet wide;

(c) 105 feet in length; or

(d) overhang of more than 10 feet.

R909-2-15. Night Time Travel Provisions.

(1) The movement of oversize loads at night will be allowed under the following conditions:

(a) loads may not exceed 12 feet wide on secondary highways, 14 feet wide on interstates, or 14 feet 6 inches high on all roadways;

(b) loads exceeding 10 feet wide, 105 feet overall length, or 10 feet front or rear overhang are required to have one certified pilot escort on interstate highways and two on all secondary highways;

(i) Exception. A tow truck towing vehicles with a total length of 120 feet or 10 feet wide may travel during hours of darkness and does not require a pilot escort.

(c) loads exceeding 92 feet overall length are required to have proper lighting every 25 feet, with amber lights to the front and sides of the load marking extreme width, and red to the rear; and

(d) night time travel authorization does not supersede adverse weather conditions.

(2) The division may authorize exceptions to the night time travel provisions based on mitigating circumstances.

R909-2-16. Oversize Divisible Load Provisions.

(1) An oversize permit may be issued for moving a combination of vehicles and loads exceeding the legal limits under the following conditions:

(a) the height of the combination or load does not exceed 14 feet 6 inches;

(b) the width of the combination or load does not exceed 8 feet 6 inches;

(c) in multiple trailer combinations, a lighter trailer may not be placed in front of a heavier trailer when the weight difference is greater than 4000 pounds; and

(d) drawbars exceeding 15 feet in length shall be marked with retro-reflective tape on half of the entire length of the drawbar on both the left and right side of the drawbar.

(i) The drawbar shall display an amber light visible from both the right and left side of the drawbar located near the center of the drawbar.

R909-2-17. Oversize Non-Divisible Load Provisions.

(1) Permitted vehicles must comply with the following conditions:

(a) all vehicles and loads shall be reduced to the minimum practical dimensions;

(b) semi-annual and annual permits may be issued for dimensions up to, but not exceeding:

(i) 14 feet 6 inches in height,

(ii) 14 feet 6 inches in width, and

(iii) 105 feet in length.

(2) Exceptions may be granted by the division for annual permitted loads that exceed the weights identified in this section, R909-2-17.

(3) Bulldozer blades, loader buckets or similar equipment exceeding 16 feet in width shall be removed for transport and may be hauled on the same load with the machinery after removal.

(4) Loads exceeding 17 feet in width on two-lane routes, 20 feet in width on interstates, or 17 feet 6 inches in height on all public highways may be allowed under the following terms and conditions:

(a) the permittee shall notify the division by submitting a permit application online, of the dimensions of the oversize vehicle or load and the proposed route to be used;

(b) the division will notify the department region or district permit official affected by the proposed route, and will obtain authorization for the move;

(c) permittee must request authorization through the online system at least 48 hours in advance of the movement;

(d) permit is not valid until the permittee has assumed the cost and responsibility to obtain utility company authorizations and clearances; and

(e) the permittee will assume all costs when a certified police escort or escorts are required.

(5) Tow trucks may purchase a semi-annual or annual non-divisible oversize permit up to 10 feet wide and [~~150~~]165 feet in length.

(a) Loads exceeding 10 feet wide and [~~150~~]165 feet long shall purchase a single trip permit.

R909-2-18. Oversize Non-Divisible Load Provisions Requiring Pilot Escort Vehicles.

(1) One pilot vehicle is required for vehicles or loads that exceed the following dimensional conditions:

(a) 12 feet in width on secondary highways for non-interstate, and 14 feet in width on divided highways for interstates;

(b) 105 feet in length on secondary highways and 120 feet in length on divided highways;

(c) tow trucks that measure in excess of 165 feet or more in length; and

(d) overhangs of more than 20 feet shall have a pilot escort vehicle positioned to the front for front overhangs and to the rear for rear overhangs.

(2) Two pilot escort vehicles are required for vehicles or loads which exceed the following dimensional conditions:

(a) 14 feet in width on secondary highways;

(b) 16 feet in width on divided highways;

(i) mobile and manufactured homes with eaves greater than 12 inches shall be measured for overall width including eaves and pilot escort vehicles assigned as specified; or

(c) 120 feet in length on secondary highways;

(d) 16 feet in height on all highways; or

(e) when otherwise required by the division.

R909-2-19. Oversize Non-Divisible Load Provisions Requiring Police Escorts.

(1) Police escorts are required for vehicles with loads which exceed:

(a) 17 feet wide or 17 feet 6 inches high on secondary highways; or

(b) 20 feet wide or 17 feet 6 inches high on all highways; or

(c) All loads more than 175 feet in length must have a minimum of two[~~one~~] police escorts;

(d) All loads more than 200 feet in length will require a minimum of two police escorts.

(2) The division may require police escorts based on extenuating circumstances.

R909-2-20. Oversize Non-Divisible Load Lighting, Signing and Flag Requirements.

(1) Oversize non-divisible load lighting:

(a) warning lights required when headlights are necessary;

(b) front overhang of more than three feet shall be marked with a steady, amber marker light and red flag;

(c) rear overhang exceeding four feet shall be marked with red clearance lights for night travel;

(d) vehicles with front or rear overhang exceeding 20 feet from the front or rear bumper of a vehicle, or from the center of the closest axle in the absence of a bumper, a rotating or flashing beacon visible from a minimum of 500 feet, and shall be displayed at a minimum height of four feet above ground;

(e) tow vehicle headlights shall be operated on low beam, day or night, as an additional warning to traffic; and

(f) night time travel, when authorized by the division may be permitted with marker lights indicating extreme width using amber lights front and center, and red lights to the rear.

(2) Oversize non-divisible load sign requirements. Non-divisible oversize loads exceeding 10 feet in width, 14 feet 6 inches in height and 105 feet in length shall display an "OVERSIZE LOAD" sign, to warn the motoring public that extra-large vehicles are in operation. Signs must:

(a) be 7 feet by 18 inches;

(b) have a yellow background with 10-inch-high black letters that are painted with 1 5/8 inches wide stroke to read: "OVERSIZE LOAD";

(c) be impervious to moisture;

(d) have front signs mounted on front bumper or on top of vehicle cab with letters presented toward the front of the vehicle;

(e) have rear signs positioned at the rear most part of the Vehicle or load as feasible, ensuring in all cases that the load does not obstruct the view of the sign;

(f) if possible, have the bottom edge of the sign be positioned not more than 5 feet above the road surface;

(g) be mounted with adequate supporting anchorage, constructed, maintained, and displayed so that they are always clearly legible;

(h) be covered, removed or placed face down when the vehicle is not engaged in an oversize movement; and

(i) oversize loads signs are not required on LCVs.

(3) Oversize non-divisible load flag requirements. Red or orange flags must be affixed on all extremities when:

(a) vehicle or load exceeds 10 feet in width;

(b) loads on a vehicle exceeding three feet to the front or four feet to the rear of the bed or body while in operation;

(c) flags shall be completely clean and not torn, faded, or worn out and shall be fastened to wave freely; and

(d) over dimensional flagging is not required on LCVs.

(4) Tow trucks that exceed 120 feet in length are required to:

(a) display one sign on rear most of towed vehicle.

(i) the sign must have a yellow background with 10 inch high black letters that are painted with 1 5/8 inches wide stroke to read: "IN-TOW LONG LOAD"; and

(ii) be 4 feet by 2 feet minimum.

R909-2-21. Convoys.

(1) The movement of more than one permitted vehicle is allowed provided prior authorization is obtained from the division with the following conditions:

(a) the number of permitted vehicles in the convoy shall not exceed two;

(b) loads may not exceed 12 feet wide or 150 feet overall length;

(c) distance between vehicles shall not be less than 500 feet or more than 700 feet;

(d) distance between convoys shall be a minimum of one mile;

(e) all convoys shall have a certified pilot escort in the front and rear with proper signs;

(f) police escorts or department personnel may be required;

(g) convoys must meet all lighting requirements;

(h) convoys are restricted to freeway and interstate systems; and

(i) approval for convoys or night time travel may be obtained by contacting the division, and exceptions may be granted by the division on a case by case basis.

R909-2-22. Trailers More Than 53 to 57 Feet in Length.

Trailers exceeding 53 feet but not to exceed 57 feet may acquire a single trip, semiannual or annual permit. Trailers more than 53 feet must have LCV authority to purchase semi-annual and annual permits.

R909-2-23. Longer Combination Vehicles.

(1) Motor Carriers operating longer combination vehicles or LCV's must apply and be approved to operate on designated routes on Utah's interstate system.

(2) Authorized motor carriers may operate interstate LCV's with a cargo or cargo carrying length as follows:

(a) a tractor trailer or tractor trailer combination more than 81 feet not to exceed 95 feet cargo or cargo carrying length; or

(b) a truck and two-trailer combination more than 92 feet not to exceed 95 feet in length, 14 feet 6 inches in height, or 8 feet 6 inches in width.

(3) LCV conditions for operation:

(a) non-divisible dimensions with a width greater than 8 feet 6 inches or height greater than 14 feet 6 inches, may not be transported on LCV's; and

(b) acceptable travel conditions exist in accordance with hazardous conditions for loads more than 81 feet cargo or cargo carrying length.

(4) A truck and single trailer exceeding legal length may be permitted up to 88 feet, but requires LCV authority when exceeding 88 feet up to 92 feet.

(5) A dromedary unit when exceeding legal length may be permitted up to 88 feet.

(6) LCV's and double trailers exceeding 81 feet cargo carrying length may not operate on secondary highways other than those pre-approved by the division.

R909-2-24. Overweight Divisible Load Provisions.

(1) An overweight divisible load permit may be issued for moving a combination of vehicles and loads exceeding the legal limits under the following conditions:

(a) The vehicle or combination of vehicles is properly registered for 78,001 to 80,000 pounds;

(b) The width of the vehicle does not exceed 8 feet 6 inches wide or 14 feet 6 inches high;

(c) All axles weighing more than 11,000 pounds are required to have at least four tires per axle except for steering axles, self-steering variable load suspension or retractable axles, or wide base single tires, that are 14 inches or greater as indicated by the manufacturer's sidewall rating.

(2) Overweight divisible load options are:

(a) dual tires on all axles;

(b) super wide single tires that are 14 inches wide or greater;

(c) not to exceed 11,000 pounds per axle;

(d) the axle, groups of axles, and GVW do not exceed the bridge formula $W = 500(LN/(N-1) + 12N+36)$; and

(e) all axles in the group must be duals or super singles to be allowed maximum authorized weight.

(3) The combination unit will conform to the bridge formula and the legal axle and gross vehicle weight limits.

(4) A divisible load permit may not be used to transport a non-divisible load.

(a) Exception. An overweight non-divisible load may operate with a divisible overweight permit provided the axle, gross and bridge limitations do not exceed those specified on the permit.

R909-2-25. Overweight Non-Divisible Load Provisions.

(1) Permitted vehicles must comply with the following conditions:

(a) all vehicles and loads shall be reduced to the minimum practical dimensions; and

(b) the vehicle or combination of vehicles is properly registered for 78,001 to 80,000 pounds or the total gross weight of the vehicle.

(2) Actual weight must comply with the bridge table formula ~1.47 x 500 (LN/N-1 + 12N + 36).

(3) A permit for a non-divisible load may not be used to transport a divisible load.

(4) Vehicles with a gross vehicle weight of less than 125,000 may be permitted on a single trip, semiannual trip, or annual trip basis as described in Table 3:

TABLE 3

Single Trip, Semi-Annual Permits allowed up to:

Single Axle	29,000 pounds
Tandem Axle	50,000 pounds
Tridem Axle	61,750 pounds
Trunnion Axle	60,000 pounds
Gross Weight	125,000 pounds

(5) Tow trucks must be properly registered to purchase annual, semi-annual or single trip permits if they exceed legal weight limitations.

(a) The properly registered and/or permitted weight of the towed vehicle is not calculated in the tow trucks towed vehicles gross combined weight.

(b) Tow trucks must be properly registered and permitted for weight of tow truck and any additional weight placed upon it.

(c) If the towed weight is not properly registered and/or permitted, the towing vehicle will be responsible for the permitting and registration requirements of the towed vehicle.

(6) Vehicles transporting milk products may exceed the gross weight limit of 80,000 pounds or the maximum weight allowed by the Federal Bridge Formula. This requires an appropriate non-divisible permit issued by the Department.

(a) Milk products being carried using multiple trailers will be required to abide by divisible requirements and do not get the non-divisible exception.

R909-2-26. Overweight Non-Divisible Loads Exceeding 125,000 Pounds Gross or Axle Weights.

(1) Loads exceeding 125,000 pounds gross, or axle weights in R909-2-24, may only purchase single trip permits.

(2) Axle, bridge, and gross weight allowances will be determined based on the non-divisible bridge table formula ~1.47 x 500 (LN/N-1 + 12N + 36) or in accordance with the bridge table.

(3) 9 feet wide axles are allowed 7.5% more weight than 9 feet wide axles.

(4) 10 feet wide axles are allowed 15% more weight than 8 feet wide axles.

(5) When using an axle equipped with eight tires, rather than four, add 10% to the weight authorized for an 8-foot-wide axle group.

(6) All tires shall comply with the manufacturer's tire load rating as indicated on the tire side wall.

(7) All STE operations must have a STE profile sheet when the axle limitations specified in Table 3 or bridge table are exceeded.

R909-2-27. Mobile and Manufactured Homes.

(1) Mobile and manufactured homes exceeding 14 feet 6 inches to 16 feet in wall-to-wall width, transported on their own running gear, may be issued a single trip permit under the following conditions:

(a) all trailer axles shall be equipped with operational brakes; and

(b) axle and suspensions shall not exceed manufacturer's capacity rating.

(2) Paneling requirements of the open sides of a mobile manufactured home:

(a) a rigid material of 0.5-millimeter plastic sheathing backed by a rigid grillwork not exceeding squares of four feet to prevent billowing must fully enclose the open sides of the units in transit.

(3) Rear mounted stop and turn signal lights shall be a minimum 6 inches in diameter with a type 35 red reflector lens.

(a) The lens shall be mounted not more than 18 inches from the outer edge of the unit and not less than 15 inches or more than 8 feet above the road surface.

(b) Houses, buildings, and structures not manufactured or built to be transported, will not require tail, brake, or signal lights mounted on the structures as certified pilot and police escort vehicles provide sufficient warning of the intent to brake, turn or stop.

(4) Two safety chains shall be used, one each on the right and left sides but separate from the coupling mechanism connecting the tow vehicle and the mobile and manufactured home while in transit.

(5) Tow Vehicles. Tow vehicles shall comply with the following minimum requirements:

(a) conventional or cab-forward configuration shall have a minimum wheelbase of 120 inches;

(b) cab-over engine tow vehicles shall have a minimum wheelbase of 89 inches;

(c) have a minimum of four rear tires; and

(d) mirrors on each side of the tow vehicle shall be arranged so that the driver can see the entire length of both sides of the towed unit.

(6) Trailer brake requirements:

(a) mobile manufactured homes more than 8 feet 6 inches wide, up to 12 feet wide and equipped with one axle, must have operational brakes; and

(b) a minimum of two axles equipped with operative brake assemblies is required on each mobile manufactured home unit more than 12 feet wide.

R909-2-28. Pilot Escort Requirements and Certification Program.

(1) Pilot escort driver requirements. Individuals who operate a pilot escort vehicle must meet the following requirements:

(a) must be a minimum of 18 years of age;

(b) must possess a valid driver's license for the state jurisdiction in which the driver resides;

(c) must obtain a certification card by an authorized qualified certification program as outlined in this section, and shall have it in their possession at all times while in pilot escort operations;

(d) within 30 days pilot escort drivers must provide a current Motor Vehicle Record (MVR) certification to the qualified certification program at the time of the course;

(e) no passengers under 16 years of age are allowed in pilot escort vehicles during movement of oversize loads;

(f) a pilot escort driver may not perform as a tillerman/steerman while performing pilot escort operations; and

(g) a pilot escort driver must meet the requirements of 49 CFR 391.11 if using a vehicle for escort operations that weighs more than 10,000 lbs.

(2) Driver certification process.

(a) Drivers domiciled in Utah must complete a Utah pilot escort certification course authorized by the division. A list of authorized instructors may be obtained by contacting (801) 965-4892.

(b) Pilot escort drivers domiciled outside of Utah may operate as a certified pilot escort driver with another state's certification credential, provided the course meets the minimum requirements outlined in the Pilot Escort Training Manual - Best Practices Guidelines as endorsed by the Specialized Carriers and Rigging Association, Federal Highway Administration, and the Commercial Vehicle Safety Alliance.

(c) The department may enter into a reciprocal agreement with other states provided they can demonstrate that course materials are comprehensive and meet minimum requirements outlined by the department.

(i) A current listing of reciprocity states may be obtained by contacting the division at 801-965-4892.

(d) The pilot escort driver's initial certification expires four years from the date issued, and it is the responsibility of the driver to maintain certification.

(i) One additional four-year certification may be obtained through a mail-in or on-line re-certification process provided by a qualified pilot escort training entity.

(3) Suspensions and revocations.

(a) Pilot escort drivers may have their certification denied, suspended, or revoked by the division if it is determined that a disqualifying offense has occurred within the previous four years.

(b) Drivers convicted of serious traffic violations such as excessive speed, reckless driving and driving maneuvers reserved for emergency vehicles, driving under the influence of alcohol or controlled substances may have their certification denied, suspended, or revoked by the division.

(c) The division may suspend for first offenses up to one year. Subsequent offenses may result in permanent revocation of driver certification.

(d) When a driver is denied pilot escort driving privileges for reasons other than the conditions set forth in this rule, the individual may file an appeal.

(i) The appeals shall be handled by a steering committee created by the division.

(e) The steering committee shall have the powers granted to the deputy director in R907-1-3 for appeals from other division administrative actions. This committee's decision, if adopted by the director of the division, will be considered a final agency order under Administrative Procedures in R907-1.

(4) Pilot escort vehicle standards.

(a) Certification inspections are valid for up to one year.

(b[~~a~~]) Pilot escort vehicles may be either a passenger vehicle or a two-axle truck with a 95 inch minimum wheelbase and a maximum gross vehicle weight of 12,000 lbs. and properly registered and licensed as required under Utah Code Sections 41-1a-201 and 41-1a-401.

(c[~~b~~]) Equipment shall not reduce visibility or mobility of pilot escort vehicle while in operation.

(d[e]) Trailers may not be towed at any time while in pilot escort operations.

(e[~~d~~]) Pilot escort vehicles shall be equipped with a two-way radio capable of transmitting and receiving voice messages over a minimum distance of one-half mile.

(i) Radio communications must be compatible with accompanying pilot escort vehicles, utility company vehicles, permitted vehicle operator and police escort, when necessary.

(ii) When operating with police escorts a CB radio is required.

(f[~~e~~]) Pilot escort vehicles may not carry a load.

(5) Pilot escort vehicle signing requirements. Sign requirements on pilot escort vehicles are as follows:

(a) pilot escort vehicles must display an " OVERSIZE LOAD" sign, which must be mounted on the top of the pilot escort vehicle;

(b) signs must be a minimum of 5 feet wide by 10 inches high visible surface space, with a solid yellow background and 8-inch-high by 1-inch wide black letters. Solid is defined as when being viewed from the front or rear at a 90-degree angle, no light can transmit through;

(c) the sign for the front pilot escort vehicle shall be displayed so it is always clearly legible and readable by oncoming traffic; and

(d) the rear pilot escort vehicle shall display its sign so it is readable by traffic overtaking from the rear and clearly legible at all times.

(6) Pilot escort vehicle lighting requirements. Two methods of lighting are authorized by the division. Requirements are as follows:

(a) two AAMVA approved amber flashing lights mounted with one on each side of the required sign. These shall be a minimum of six inches in diameter with a capacity of 60 flashes per minute with warning lights illuminated at all times during operation;

(b) an AAMVA approved amber rotating, oscillating, or flashing beacon or light bar mounted on top of the pilot escort vehicle. This beacon light bar must be unobstructed and visible for 360 degrees with warning lights illuminated at all times during operation; and

(c) incandescent, strobe or diode lights may be used provided they meet the above criteria.

(7) Pilot escort vehicle equipment requirements. Pilot escort vehicles shall be equipped with the following safety items:

(a) standard 18-inch or 24-inch red and white "STOP" and black and orange "SLOW" paddle signs. For nighttime travel moves, signs must be reflective in accordance with MUTCD standards;

(b) nine reflective triangles or 18-inch reflective orange traffic cones, not to replace or be replaced by items (c) or (d);

(c) eight red-burning flares, glow sticks or equivalent illumination device approved by the division;

(d) three orange 18-inch-high cones;

(e) a flashlight with a minimum 1 1/2-inch lens diameter, with extra batteries or charger. An emergency type shake or crank flashlight will not be allowed;

(f) 6-inch minimum length red or orange cone or traffic wand for use when directing traffic;

(g) an orange hardhat and class 2 safety vest for personnel involved in pilot escort operations. Class 3 safety vests are required for nighttime travel moves;

(h) a height-measuring pole made of a non-conductive, non-destructive, flexible or frangible material, only required when escorting a load exceeding 16 feet in height;

(i) a fire extinguisher;

(j) a first aid kit that is clearly marked;

(k) one spare "OVERSIZE LOAD" sign, 7 feet by 18 inches;

(l) one serviceable spare tire, tire jack and lug wrench;

(m) a handheld two-way simplex radio or other compatible form of communication for operations outside pilot escort vehicles; and

(n) vehicles shall not have unauthorized equipment on the vehicle such as those generally reserved for law enforcement personnel.

(8) Police escort vehicle equipment and safety requirements. Police escort vehicles shall be equipped with the following safety items:

(a) all officers must have a CB radio to communicate with the pilot and transport vehicles;

(b) officers shall complete a Utah Law Enforcement Check List and Reporting Criteria Form;

(c) officers shall verify that all pilot escorts are in possession of current pilot escort inspections, or they shall complete an inspection prior to load movement;

(d) police vehicles must be clearly marked with emergency lighting visible 360 degrees; and

(e) officers shall be in uniform while conducting police escort moves.

(9) Insurance for pilot escort vehicles.

(a) Driver shall possess a current certificate of insurance or endorsement which indicates that the operator, or the operator's employer, has in full force and effect not less than $750,000 combined single limit coverage for bodily injury and property damage as a result of the operation of the escort vehicle, the escort vehicle operator, or both causing the bodily injury and property damage arising out of an act or omission by the pilot escort vehicle operator of the escort duties required by the regulations. Such insurance or endorsement, as applicable, must always be maintained during the term of the pilot escort certification.

(b) Pilot escort vehicles shall have a minimum amount of $750,000 liability. This is not a cumulative amount.

(10) Pre-trip planning and coordination requirements. A co-ordination and planning meeting shall be held prior to load movement. The drivers carrying or pulling the oversize loads, the pilot escort vehicle drivers, law enforcement officers, department personnel, and public utility company representatives shall attend as required. When police escorts are present, a Utah Law Enforcement Check List and Reporting Criteria Form must be completed. This meeting shall include discussion and coordination on the conduct of the move, including at least the following topics:

(a) the person designated as being in charge such as a department representative or a law enforcement officer;

(b) all documentation for authorized routing and permit conditions is distributed to all appropriate individuals involved in the move;

(c) communication and signals coordination;

(d) permitted dimensions will be verified with measurement of load dimensions; and

(e) copies of permit and routing documents shall be provided to all parties involved with the permitted load movement.

(11) Permitted vehicle restrictions on certain highways. Certified pilot escort operators must refer to highway restrictions specified in the secondary highway restrictions prior to all load movements.

(12) Flagging requirements. During the movement of an over-dimensional load or vehicle, the pilot escort driver, in the performance of the flagging duties required by R909-2-28, may control and direct traffic to stop, slow or proceed in any situations where it is deemed necessary to protect the motoring public from the hazards associated with the movement of the over-dimensional load or vehicle. The pilot escort driver, acting as a flagger, may aid the over-dimensional load or vehicle in the safe movement along the highway designated on the over-dimensional load permit and shall:

(a) assume the proper flagger position outside the pilot escort vehicle, and as a minimum standard, have in use the necessary safety equipment as defined in 6E.1 of the MUTCD;

(b) use "STOP" and "SLOW" paddles or a 24-inch red or florescent orange or red square flag to indicate emergency situations, and other equipment as described in 6E.1 of the MUTCD; and

(c) comply with the flagging procedures and requirements as set forth in the MUTCD and the Utah Department of Transportation Flagger Training Handbook.

R909-2-29. Requirements for Pilot Escort Qualified Training and Certification Programs.

(1) Application process. Application to become a third-party pilot escort trainer or instructor shall be made on a form furnished by the division, and shall include the following:

(a) name and address of entity;

(b) list of instructors;

(c) resumes of each instructor outlining related experience in the pilot escort, heavy haul, academia, or commercial vehicle enforcement fields;

(d) a copy of entity's business license;

(e) sample of digital image certification card that will be issued to students upon completion of the course;

(f) sample of "Flagger" certification card that will be issued to students upon completion of the course;

(g) procedural guidelines that outline security measures implemented to safeguard student's personal information; and

(h) copies of all course curriculum and testing materials. Course materials will be reviewed and approved by the division to ensure that all requirements are met.

(2) Course curriculum requirements. An extensive course curriculum description and information can be obtained by contacting the UDOT Motor Carrier Division Customer Service/Superload team at (801) 965-4892. Course curriculum to certify pilot escort drivers to operate in Utah must cover the following topics:

(a) division rules governing over-size load movements;

(b) pilot escort operations;

(c) flagging maneuvers for over dimensional loads;

(d) oversize or overweight load movement, coordination, planning and communication requirements and best practices;

(e) pilot escort vehicle positioning and situational training;

(f) rail grade crossing safety;

(g) routing techniques, including pre-trip surveys; and

(h) insurance coverage requirements and liability issues.

(3) Testing procedures.

Testing materials shall be submitted to the division for approval. Tests should be structured with a minimum of 40 questions per exam. A minimum of two different examinations shall be submitted and used randomly during the instruction of the course and structured as follows:

(a) 12 Fill in the blank;

(b) 12 Multiple choice;

(c) 12 true and false questions;

(d) one to six questions dealing with safety equipment;

(e) one to four questions dealing with the duties of pilot escort drivers;

(f) one to six questions dealing with maintenance of equipment; and

(g) one to six questions dealing with items that must be collected in a route survey.

(4) Grading of examinations. Entity must provide an explanation of how the test will be administered.

(5) Students must pass with an 80% score to be certified.

(6) Students receiving less than 80% score will be allowed to attend one additional class without additional cost except for reimbursement of any additional materials and postage costs.

(7) When a contract is terminated with the third-party pilot and escort trainer, it will be the responsibility of the entity to provide an electronic database to the division, of all students that have completed the course.

(8) Applicant Recertification Procedures.

(a) Entity shall provide means in which an individual may be re-certified either by mail or the internet.

(b) Entity shall submit written procedures documenting the process for the examination that will allow the applicant re-certification. The examination shall not be a duplicate of the examination used during the initial certification process and should be constructed as to educate the student on updates pertaining to pilot escort certification and legal requirements.

(c) Re-certification tests shall be structured as outlined in R-909-2-29.

(d) Applicant's receiving less than 80% score will be allowed to retake the certification exam one additional time at no additional class without additional cost except for reimbursement of any additional materials and postage costs.

(e) Students receiving less than 80% score will be allowed to attend one additional class or certify by mail or online without additional cost except for reimbursement of any additional materials and postage costs.

(9) Training costs. Costs associated with providing classroom instruction, materials, testing and credentialing will be the responsibility of the authorized training entity.

(a) These costs may be passed on to the students for certification in the form of tuition determined by the training entity based on business model and expenses.

(b) Cost proposal and course fees must be submitted to the division for approval as part of the application process.

(10) Suspensions and revocations of pilot escort training entities.

(a) The division may suspend or revoke the entity's ability to provide services if the entity fails to meet conditions and requirements set forth in R909-2-29.

(b) If an entity has its authority to provide services revoked or suspended, the entity may appeal the decision.

(i) The appeals shall be handled by a steering committee created by the division.

(ii) The steering committee shall have the powers granted to the department's deputy director for appeals from other division administrative actions.

(iii) This committee's decision, if adopted by the director of the division, will be considered a final agency order under the Utah Administrative Procedures Act.

(11) The division has the right to review:

(a) rates;

(b) fees;

(c) procedures; and

(d) the certification process established by the entity whenever the division deems it necessary to ensure compliance with this rule.

(12) Record retention and data management requirements. Authorized pilot escort qualified training and certification entities or institutions shall maintain the following certification and recertification records for a period of eight years:

(a) student's name, address, and contact information;

(b) driver's license number, original MVR and original proof of insurance information from insurance provider;

(c) copy of each student's written exam;

(d) digital copy of certification flagger card, including photo;

(e) training and expiration dates on all students;

(f) re-certification and expiration dates; and

(g) list of instructors, proctors, administrators, and a copy of their resumes and date of classroom instruction and recertification dates providing services.

(13) Records may be scanned and kept electronically provided entity has necessary data backup and retrieval procedures.

(a) The division has the right to review any records retained and may observe the instruction given both in the classroom and through the re-certification process whenever the division deems it necessary to [~~i~~]ensure compliance with this rule.

(b) The loss, mutilation or destruction of any records which an entity is required to maintain, must be immediately reported by the entity by affidavit stating the date such records were lost, mutilated, or destroyed, and the circumstances involving such loss, mutilation, or destruction.

(c) All records must be retained by the entity for eight years, except for the computerized file, which is to be kept permanently, during which time the entity shall be subject to inspection by the division during reasonable business hours. If the entity goes out-of-business, the permanent record shall be submitted by the entity to the division.

(d) It is the responsibility of the entity to provide a list of applicants that have successfully re-certified along with the corresponding grade to the division at the end of each quarter of each calendar year.

(e) All records, including computerized records, must be provided to the division when requested for an audit or review of the entities records. Failure to provide all records as requested by the division is a violation of this rule.

(f) Entities shall maintain accurate, up to date records.

R909-2-30. Farmers, Implements of Husbandry and Agricultural Operations.

(1) Vehicle combinations for hay truck operations may transport two rolls or bales of hay side by side when:

(a) the two rolls or bales are 10 feet or less in combined width;

(b) the load is being operated with a valid non-divisible oversize permit;

(c) oversize loads exceeding 8 feet 6 inches may not be transported on double trailers exceeding 61 feet cargo or cargo carrying length;

(d) the load must meet all other divisible load requirements in R909-2-24; and

(e) loads are properly secured.

(2) Implements of husbandry moved by a farmer, rancher, or his employees in connection with an agricultural operation must comply with:

(a) every farm tractor and towed farm equipment, towed or self-propelled implements of husbandry, designed for operation at speeds not more than 25 miles per hours, must always be equipped with a slow-moving vehicle emblem mounted on the rear; and

(b) every farm tractor and every self-propelled implement of husbandry manufactured or assembled after January 1970 shall be equipped with vehicular hazard warning lights visible from a distance not less than 1,000 feet to the front and rear in normal sunlight, which shall be displayed whenever any such vehicle is operated upon a highway.

R909-2-31. Snow Plow Operations.

(1) Blades more than 8 feet 6 inches must be equipped with a yellow, rotating beacon warning light.

(2) Snow plows with up to 12 feet wide blades may operate without oversize permits, when they comply with:

(a) lights which provide adequate illumination when the blade is in either the up, or down position;

(b) signaling lights shall not be obscured; and

(c) blades must be angled so that the minimum width is exposed to oncoming traffic during periods of travel between jobs.

R909-2-32. Parade Floats.

(1) Parade floats are not required to obtain an overweight or oversize permit, but they must meet the following requirements:

(a) all floats must have sufficient proof of insurance;

(b) all floats must carry the necessary safety equipment for the safe operation of the vehicle during movement;

(c) the float driver must have a clear 360-degree visibility;

(d) movement to and from parades should be made only during daylight hours unless the vehicle is adequately lighted and there is minimal congestion; and

(e) floats more than 14 feet 6 inches in height, must be routed by the division.

R909-2-33. Transportation of Utility Poles.

(1) Utility poles may be transported up to 120 feet in overall length, including overhangs, with single trip, semi-annual or annual permit in accordance with:

(a) oversize load restrictions;

(b) pilot escort requirements;

(c) travel restrictions; and

(d) signing and lighting requirements.

(2) Permits are issued to the trailer transporting the poles using the trailer registration information.

(a) Upon company request, the permit may be issued to the truck or truck tractor.

(b) Utility poles exceeding 120 feet shall purchase a single trip, non-divisible oversize permit.

R909-2-34. Special Mobile Equipment.

(1) Special mobile equipment or SME refers to vehicles:

(a) not designed or used primarily for the transportation of persons or property;

(b) not designed to operate in traffic; and

(c) only incidentally operated or moved over the highways.

(2) Special mobile equipment exempt from registration includes:

(a) farm tractors; and

(b) off road motorized construction or maintenance equipment including backhoes, bulldozers, compactors, graders, loaders, road rollers, tractors, trenchers, and ditch digging apparatus.

(3) Heavy equipment designed for off-highway uses such as scrapers, loaders, off highway cranes, and rock trucks, but not tracked vehicles may be issued single trip permits to operate under their own power, on approved routes other than interstate highways, as follows:

(a) the distance traveled shall not generally exceed 20 miles;

(b) only daylight operations are authorized, and all oversize restrictions apply;

(c) weights must comply with the bridge formula for non-divisible loads;

(d) single axles equipped with single tires shall not be authorized to exceed 40,000 pounds;

(e) a minimum of one pilot escort vehicle is required; and

(f) special mobile equipment shall be routed by the division.

(4) Special mobile equipment or SME affidavit. All persons who operate or cause to operate an SME exempt from registration shall submit a completed special mobile equipment affidavit to the division.

(a) To be deemed complete, an affidavit must be on the form provided by the division and all required fields filled in. Affidavits will be available at all ports of entry. Affidavits shall be turned into a port of entry.

(b) Special mobile equipment exempt from registration shall carry a copy of the approved affidavit in the vehicle at all times;

(c) Vehicles that are not special mobile equipment shall register with the Utah State Tax Commission prior to operating the vehicle on a public highway.

(d) Upon receipt of a denial of special mobile equipment, if the owner or operator wishes to appeal the decision of the division, a petition may be filed with the department, within 30 days.

(i) A response to an appeal from the department will be made in writing within 30 days.

R909-2-35. Special Truck Equipment.

(1) The following vehicle configurations are considered special truck equipment:

(a) concrete pumper trucks;

(b) cranes or trucks performing crane service with a crane lift capacity of five tons or more; and

(c) well boring trucks.

(2) Vehicles classified as special truck equipment may be issued an oversize or overweight permit when exceeding legal dimensions.

(a) An approved profile sheet for special truck equipment shall be carried in the vehicle with the permit, when the axle limitations specified in R909-2-5 Table 2 or actual bridge or gross are exceeded.

(b) Must meet the requirements of a non-divisible load as defined in Utah Rule 909-2-3(33).

(3) Vehicles classified as special truck equipment are eligible for a 50 % registration fee reduction.

R909-2-36. Port-of-Entry By-Pass Permit Provisions.

(1) A temporary by-pass permit may be issued to accommodate the multi-trip highway transportation needs to motor carriers who meet the following criteria:

(a) Motor carriers shall meet the "Multi-trip" definition to receive and maintain by-pass privileges.

(i) A motor carrier may receive an exception from this requirement on a case-by-case basis, if the motor carrier is able to demonstrate that denial of a by-pass permit will cause a hardship if the vehicle must be diverted to a port-of-entry.

(b) The basis for qualification to participate in the by-pass program is based in part on the carrier's safety history as shown in the Federal Motor Carrier Safety Administration's Safety Measurement System.

(i) A carrier with a CSA basic scores equal to or greater than the intervention thresholds noted in Table 4 for General, HM and Passenger, plus one other BASIC at or above the motor carrier threshold is not eligible to participate in the by-pass program.

(ii) A carrier is not eligible for a by-pass permit when the carrier meets the definition of a High-Risk Motor Carrier in Table 4.

TABLE 4

High Risk Motor Carrier Criteria

BASIC	General	HM	Passenger
Unsafe Driving	65%	60%	50%
Fatigue Driving (HOS)	65%	60%	50%
Driver Fitness	80%	75%	65%
Controlled Substances and Alcohol	80%	75%	65%
Vehicle Maintenance	80%	75%	65%
Cargo-Related	80%	75%	65%
Crash Indicator	65%	60%	50%

(c) A carrier may become eligible for a by-pass permit after a focused or comprehensive review indicates that the carrier is in compliance.

(d) As a condition of receiving a by-pass permit, a motor carrier is subject to audits, safety assessments, and inspections as the division considers necessary to carry out state and federal law.

(e) Vehicles that obtain by-pass privileges must have a weight ticket, from a scale certified by the Department of Agriculture, available for inspection by law enforcement. Scale tickets must be electronically printed and shall specify the time, date, unit-specific information, and destination.

(2) By-pass applications shall be submitted to the division.

(a) By-pass privilege carriers must re-apply yearly.

(b) Subcontractors operating under their own authority must apply for by-pass privileges independently.

(c) Carriers who lease vehicles from a subcontractor must ensure that the established by-pass criterion is met to maintain privileges.

(d) By-pass permit privileges are valid from the approval date and expire at the end of the application year on December 31.

(e) Applications must show routing information including point of origin, destination, and routine routes traveled.

(3) Approved vehicles within a motor carrier's fleet will be issued a by-pass decal, specific to each individual vehicle, and will receive a by-pass certificate that shall be carried in the vehicle.

(4) By-pass privileges may be granted to carriers traversing multiple ports of entry within the same route.

(5) Authorized by-pass routes are allowed for the following Port of Entries:

(a) Daniels Port of Entry on SR 40 with empty vehicles, traveling eastbound only;

(b) Kanab Port of Entry on Highway 89 from Kanab's Main Street to the Kanab Port of Entry, while traveling on Hwy 389 between Las Vegas, Nevada and Page, Arizona, and all vehicles must clear the St. George Port of Entry;

(c) Perry Port of Entry may be by-passed and travel on Highway 89 between Brigham City and Ogden; and

(d) Monticello Port of Entry may be by-passed on US-191 with empty vehicles only.

(6) By-pass privileges may be revoked or suspended should a carrier fail to meet the safety standards as set forth in the:

(a) Compliance, Safety, Accountability (CSA) program of the Federal Motor Carrier Safety Administration;

(b) Federal Motor Carrier Safety Regulations;

(c) size and weight limitations;

(d) by-pass zone routes; and

(e) out-of-service criteria.

(7) When an application for a by-pass permit is denied the motor carrier may file an appeal.

(a) The appeal shall be handled by the division hearing officer.

(8) The division will notify local law enforcement agencies of those carriers meeting the criteria for by-pass privileges.

R909-2-37. Annual Review of Permit Regulations and Conditions.

(1) During the regularly scheduled Motor Carrier Advisory Board meeting in April of each year, the board will review permit conditions and regulations as needed. The board is not required to review each of these items every year.

(2) This meeting will provide a forum for interested parties to provide evidence in support of regulation or permit condition modification.

(3) All interested parties must notify the division of these issues by March 1st of each year to ensure placement on the agenda.

(4) Any approved changes to permit conditions or regulations will be incorporated into this rule.

KEY: permits, safety regulations, size and weight, trucks
Date of Enactment or Last Substantive Amendment: [~~December 12, 2018~~]2019
Notice of Continuation: May 22, 2019
Authorizing, and Implemented or Interpreted Law: 72-1-201; 72-7-406; 72-9-303; 41-1a-102; 41-1a-231; 41-1a-1206; 72-7-402; 72-7-404; 72-7-407; 72-9-301; 72-9-502

Transportation, Motor Carrier
R909-19
Safety Regulations for Tow Truck Operations - Tow Truck Requirements for Equipment, Operation, and Certification

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 44147
FILED: 10/22/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: These proposed changes to Section R909-19-3 definitions are required by H.B. 228, passed in the 2019 General Session.

SUMMARY OF THE RULE OR CHANGE: H. B. 228 (2019) included the addition of the definitions of "State impound yard" and "Tow truck motor carrier". A definition of "Tow truck operator" was added to correspond exactly to Section 72-9-102. There is a fee increase for daily storage fees for non-consent, non-police generated for outside storage of light duty, medium duty, and heavy duty towed vehicles at Subsection R909-19-13(2)(i)(a). Outside storage is: light duty $25 to $40, medium duty $45 to $60, and heavy duty $45 to $60. This amended fee increased by $15 per day to

match the storage fees allowed for non-consent towing in the 2019 Towing Fee Schedule, and to standardize storage fees for all tows.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 41-6a-1405 and Section 53-1-106 and Section 72-9-601 and Section 72-9-602 and Section 72-9-603 and Section 72-9-604

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The Department of Transportation (Department) estimates that neither it nor the state will experience a fiscal impact related to these proposed amendments because state and federal law already require it to regulate and inspect motor carrier commercial vehicles. These proposed amendments will not change the amount of work required to meet the Department's responsibilities.
♦ LOCAL GOVERNMENTS: The Department estimates these proposed amendments will not cause any fiscal impact to local governments because it only changes how the Department regulates the tow truck motor carrier industry. These proposed amendments do not require local governments to do anything.
♦ SMALL BUSINESSES: All tow truck operators in Utah are small businesses. These proposed amendments provide for a fee increase for daily storage fees for non-consent, non-police generated for outside storage of light duty, medium duty, and heavy duty towed vehicles at Subsection R909-19-13(2)(i)(a). Outside storage is: light duty $25 to $40, medium duty $45 to $60, and heavy duty $45 to $60. These increases are to fees charged by the operators. Therefore, these proposed amendments will have a positive impact to small businesses by increasing their revenues.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: It is not possible to estimate with any degree of accuracy the number of non-consent, non-police generated tow services that will be performed at the increased rate for outside storage. The fee increase will affect and be charged to "other persons", but there is no way of calculating the exact extra amount charged by the tow company, as the fees are calculated by number of days the vehicle is stored, which varies greatly.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Persons affected by these proposed amendments will be those vehicle owners who will be required to pay increased fees for daily storage fees for non-consent, non-police generated for outside storage of light duty, medium duty, and heavy duty towed vehicles at Subsection R909-19-13(2)(i)(a). Outside storage is: light duty $25 to $40, medium duty $45 to $60, and heavy duty $45 to $60. It is not possible to estimate with any degree of accuracy the number of non-consent, non-police generated tow services that will be performed at the increased rate for outside storage; no way of calculating the exact extra amount charged by the tow company, as the fees are calculated by number of days the vehicle is stored, which varies greatly.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: These proposed amendments should only have a fiscal impact on tow operators, but not on businesses generally.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ James Palmer by phone at 801-965-4000, by FAX at 801-965-4338, or by Internet E-mail at jimpalmer@utah.gov
♦ Linda Hull by phone at 801-965-4253, or by Internet E-mail at lhull@utah.gov
♦ Lori Edwards by phone at 801-965-4048, or by Internet E-mail at loriedwards@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/16/2019

THIS RULE MAY BECOME EFFECTIVE ON: 12/23/2019

AUTHORIZED BY: Carlos Braceras, Executive Director

Appendix 1: Regulatory Impact Summary Table*

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

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

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

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

1) The Department of Transportation (Department) estimates the businesses most likely to experience a material fiscal impact resulting from these proposed amendments are part of the motor vehicle towing industry in Utah. This fiscal impact may be positive or negative, depending upon the individual business, or type of business impacted, and how the Department defines fiscal impact.

2) The Department of Workforce Services (DWS) Firm Find Data lists 99 establishments identified by the NAICS industry code 488410, which is assigned to the Motor Vehicle Towing industry. However, Department records indicate there are approximately 600 Tow Truck Motor Carriers operating in Utah.

3) All the approximately 600 Tow truck motor carriers are small businesses, as defined by Subsection 63G-3-102(19). For a complete list of these firms, contact the Department.

4) Proposed changes to Section R909-19-3 definitions are required by H.B. 228 (2019). H. B. 228 included the addition of the definitions of "State impound yard" and "Tow truck motor carrier." A definition of "Tow truck operator" was added to correspond exactly to Section 72-9-102. There is a fee increase for daily storage fees for non-consent, non-police generated for outside storage of light duty, medium duty, and heavy-duty towed vehicles at Subsection R909-19-13(2)(i)(a). Outside storage is: light duty $25 to $40, medium duty $45 to $60, and heavy duty $45 to $60. This amended fee increased by $15 per day to match the storage fees allowed for non-consent towing in the 2019 Towing Fee Schedule, and to standardize storage fees for all tows. It is not possible to estimate with any degree of accuracy the number of non-consent, non-police generated tow services that will be performed at the increased rate for outside storage. The fee increase will affect and be charged to "other persons," but there is no way of calculating the exact extra amount charged by the tow company, as the fees are calculated by number of days the vehicle is stored, which varies greatly.

5) Carlos Braceras, Executive Director of the Department has reviewed and approved this fiscal analysis.

R909. Transportation, Motor Carrier.

R909-19. Safety Regulations for Tow Truck Operations - Tow Truck Requirements for Equipment, Operation, and Certification.

R909-19-1. Authority.

This rule is enacted under the authority of Sections 72-9-601, 72-9-602, 72-9-603, 72-9-604, 53-1-106, 41-6a-1405, Utah Code.

R909-19-2. Applicability.

All tow truck motor carriers and employees must comply and observe all rules, including R909-1, regulations, traffic laws and guidelines as prescribed by State Law, including Sections 41-6a-401.9, 41-6a-1404, 41-6a-1405, 41-6a-1406, 72-9-301, 72-9-303, 72-9-601, 72-9-602, 72-9-603, 72-9-604, 72-9-701, 72-9-702, and 72-9-703.

R909-19-3. Definitions.

(1) "Consent tow" means any tow truck service that is done at the vehicle, vessel, or outboard motor owner's, or its legal operator, knowledge and/or approval.

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

(3) "Division" means the Motor Carrier Division.

(4) "Emergency moves" means a tow operation initiated by law enforcement to move a wrecked or disabled motor vehicle.

(5) "Gross combination weight rating (GCWR)" means the value specified by the manufacturer as the loaded weight of a combination (articulated) motor vehicle. In the absence of a value specified by the manufacturer, GVCR will be determined by adding the GVWR of the power unit and the total weight of the towed unit and any load thereon.

(6) "Gross vehicle weight rating (GVWR)" means the value specified by the manufacturer as the loaded weight of a single motor vehicle.

(7) "Life-essential personal property" includes those items essential to sustain life or health including: prescription medication, medical equipment, essential clothing (e.g. shoes, coat), food and water, child safety seats, and government issued photo-identification.

(8) "Non-consent police generated tow" means tow truck service that was ordered by a peace officer, or a person acting on behalf of a law enforcement agency, or a highway authority, as defined in Section 72-1-102.

(9) "Non-consent non-police generated tow" means towing services performed without the prior consent or knowledge of the owner of the vehicle or the person authorized by the owner to operate the vehicle from private property. The tow truck service must be from private property, at the request of the property landowner or agent for the landowner.

(10) "Normal office hours" means hours of operation where the office or yard shall be staffed and open for public business during normal business hours Monday thru Friday, except for designated state and federal holidays.

(11) "Recovery operation" means a towing service that may require charges in addition to the normal one-truck/one-operator towing service requirements. The additional charges may include charges for manpower, extra equipment, and supplies necessary for the recovery operation.

(12) "State impound yard" means a yard for the storage of a vehicle, vessel, or outboard motor that meets the requirements of rules made by the commission pursuant to Subsection 41-1a-1101(5).

(13) "Tow truck" means a commercial vehicle constructed, designed, altered, or equipped primarily for the purpose of towing or removing damaged, disabled, abandoned, seized, repossessed or impounded vehicles from highway or other place by means of a crane, hoist, tow bar, tow line, dolly tilt bed, or other similar means of vehicle transfer without its own power or control.

(14[~~3~~]) "Tow truck certification program" means a program to authorize and approve tow truck motor carrier owners, operators, and vehicles is the process by which the Department, acting under Section 72-9-602, shall verify compliance with the State and Federal Motor Carriers Safety Regulations.

(15[~~4~~]) "Tow truck motor carrier" [~~means any company that provides for-hire towing services.~~]means a motor carrier that is engaged in or transacting business for tow truck services. It includes the company's agents, officers, and representatives as well as employees responsible for hiring, training, supervising[~~ory~~], assigning, or dispatching of drivers and employees concerned with the installation, inspection, and maintenance of equipment and/or accessories.

(16) "Tow truck operator" means an individual that performs operations related to a tow truck service as an employee or as an independent contractor on behalf of a tow truck motor carrier.

(17[~~5~~]) "Tow truck service" means the functions and any ancillary operations associated with recovering, removing, and towing a vehicle and its load from a highway or other place by means of a tow truck.

(a) Tow truck service, with regards to authorized towing fees, is determined by the type and size of the towed vehicle, not the type and size of the tow truck performing the service.

(b) Towed vehicle-classifications will be used when determining authorized fees. Information regarding the GVWR to determine classification category of towed vehicle can be found on the identification plate on the vehicle driver side doorframe. Towed vehicle classifications are as follows:

(i) "Light duty" means any towed vehicle with a GVWR 10,000 pounds or less;

(ii) "Medium duty" means any towed vehicle with a GVWR between 10,001 to 26,000 pounds;

(iii) "Heavy duty" means any towed vehicle with a GVWR or GCWR 26,001 pounds and greater.

[~~(16) "Tow Truck Operator" means a natural person who drives or operates the towing equipment, or a motor vehicle adapted to or designed for the towing of motor vehicles.~~]

(18[~~7~~]) "Tow truck motor carrier steering committee" means a committee established by the Motor Carrier Division and will include enforcement personnel, industry representatives and other persons as deemed necessary.

R909-19-4. Duties - Enforcement - Compliance Audits, Inspections and Right of Entry.

The Department shall administer and in cooperation with the Department of Public Safety, Utah Highway Patrol Division as specified under Section 53-8-105, shall administer and enforce state and federal laws related to the operation of tow truck motor carriers within the state. In addition, a tow truck motor carrier shall submit its lands, property, buildings, equipment for inspection and examination and shall submit its accounts, books, records, or other documents for inspection and copying to verify compliance as authorized by Section 72-9-301.

R909-19-5. Insurance.

(1) Tow truck motor carriers performing emergency moves shall maintain liability insurance coverage of at least $750,000 per occurrence. Tow truck motor carriers performing non-emergency moves shall maintain liability insurance coverage of at least $1,000,000 per occurrence.

(2) All tow truck motor carriers performing consent or non-consent tows are required to obtain a MCS-90 endorsement for environmental restoration as required in 49 CFR Part 387 - Minimum Levels of Financial Responsibility for Motor Carriers.

(3) Evidence of required insurance shall be maintained at the principal place of business and made available to the Department and/or Investigator upon request and prior to issuance of the tow truck motor carrier certification.

R909-19-6. Penalties and Fines.

(1) Any tow truck motor carrier that fails or neglects to comply with State or Federal Motor Carrier Safety Regulations, other statutes, any part of this rule, any term or condition of the permit or any materials that it incorporates either by reference or attachment, or a Departmental order, is subject to:

(a) a civil penalty as authorized by Section 72-9-701, and 72-9-703;

(b) suspension or revocation of a carrier or tow truck certification (suspension or revocation will be based upon the severity of violations to this rule, Sections 41-6a-1406 and 72-9-603);

(c) issuance of a cease-and-desist order as authorized by Section 72-9-303; and

(d) the revocation or suspension of registration by the Utah State Tax Commission pursuant to Section 72-9-303.

R909-19-7. Towing Notice Requirements.

(1) All non-consent police generated, and non-consent non-police generated tows conducted by tow truck motor carriers must input required information in electronic form on the Division of Motor Vehicles Utah State Tax Commission's website, at "https://secure.utah.gov/ivs/ivs" as required by Utah Code Subsection 41-6a-1406(11).

(2) Tow truck motor carriers must notify the local enforcement agency having jurisdiction over the area from where the vehicle, vessel, or outboard motor was removed on all non-consent non-police generated tows immediately upon arrival at the impound or storage yard.

(a) For tows conducted on vehicles, vessels, and outboard motors and the owner information does not appear in the IVS or TLR (Title License Registration) systems, a tow truck motor carrier has met this requirement if they can provide proof that a letter has been sent to the Utah State Tax Commission Division of Motor Vehicle or the appropriate state where the vehicle, vessel, and outboard motor is registered, within two business days requesting the needed information to send the letter.

(3) The tow truck motor carrier or the tow truck operator must provide a copy of the Utah Consumer Bill of Rights Regarding Towing at first contact with the owner of a vehicle, vessel, or out board motor that was towed.

(a) The tow truck motor carrier must be able to verify that the consumer received their copy of the Utah Consumer Bill of Rights Regarding Towing.

(4) The Utah Consumer Bill of Rights Regarding Towing shall contain the language and information as published at, www.udot.utah.gov/main/f?p=100:pg:0:::1:T,V:396.

(a) The consumer has a right to receive documentation from the tow truck motor carrier showing the date and time the storage began.

(b) A consumer has the right to file a complaint alleging:

(i) Overcharges;

(ii) inadequate certification for the operator, truck or company, and;

(iii) violations of the Federal Motor Carrier Safety Regulations, Utah Code Annotated, or Utah Administrative Code.

(c) Complaints may be filed online with the Utah Department of Transportation at https://www.udot.utah.gov/main/f?p=100:pg:0:::1:T,V:4610,66405 or by contacting the Motor Carrier Division at (801) 965-4892.

R909-19-8. Certification.

There are three (3) certifications required by the Department.

(1) Tow Truck Operator Certification.

(a) Effective July 1, 2004 all tow truck operators will be tested and certified in accordance with Towing and Recovery Association of America Inc (TRAA) standards and carry evidence of certification for the appropriate level of vehicle they are operating. These standards of conduct and proficiency may be tested and certified through an accepted program approved by the Department.

(i) Towing and Recovery Association of America (TRAA) Testing Program;

(ii) Wreckmaster Certification Program;

(iii) Utah Safety Council; or

(iv) Other driver testing certification programs approved by the Department to meet certification requirements, however, the tow truck motor carrier must obtain prior approval in writing from the Motor Carrier Division Administrator or Division representative by calling (801) 965-4892.

(b) Information on qualified certification programs may be obtained by contacting the Motor Carrier Division at (801) 965-4892.

(c) Tow truck motor carriers shall ensure that all tow truck operators:

(i) are properly trained and certified to operate tow truck equipment;

(ii) are licensed, as required under Utah Code Sections 53-3-101, through 53-3-909 Uniform Driver License Act;

(iii) are complying with the requirements under Utah Code Sections 41-6a-1406 and 72-9-603;

(iv) have cleared the criminal background check required in Subsections 72-9-602(2) and (3). In addition, a tow truck motor carrier must notify the department of a tow truck operator whom is not in compliance with 72-9-602(3) within two business days of obtaining knowledge from the Bureau of Criminal Identification.

(v) obtain and maintain a valid medical examiner's certificate under 49 C.F.R Sec 391.45.

(2) Tow Truck Vehicle Certification.

(a) All tow trucks shall receive and pass a tow truck certification inspection biannually.

(b) All tow trucks must be equipped with required safety equipment. Safety Equipment List can be found at https://www.udot.utah.gov/main/f?p=100:pg:::::1:T,V:396 or by calling 801-965-4892.

(c) Upon vehicle certification, a UDOT certification sticker will be issued and shall be affixed on the driver's side rear window.

(d) Documentation of UDOT tow truck vehicle certification shall be retained and available upon request by Department personnel.

(3) Tow truck motor carrier Certification.

(a) Tow truck motor carriers shall be certified biannually to ensure compliance as required by the Federal Motor Carrier Safety Regulations, Utah Code Annotated, and local laws where applicable.

R909-19-9. Certification Fees.

The Department may charge tow truck motor carriers a fee biannually as authorized by Section 72-9-603 to cover costs associated with driver, vehicle, and carrier certifications.

R909-19-10. Information Required on Towing Receipt.

(1) Charges for services provided must be clearly reflected on a company receipt and a copy shall be provided to the customer. The receipt must include the following information:

(a) company name;

(b) address;

(c) phone number;

(d) transportation, administration, fuel surcharge, and storage fees charged;

(e) name of company driver;

(f) unit number;

(g) license plate of the towed vehicle;

(h) make, model, Vehicle Identification Number, and year of the towed vehicle;

(i) start and end time with total hours for services provided; and

(j) the date vehicle was retrieved from tow yard or other storage area.

R909-19-11. Non-Consent Towing Fee.

(1) A tow truck motor carrier may charge up to but not exceed the approved tow rate, based upon the type of non-consent tow, as indicated in the Towing Fee Schedule published online at http://www.udot.utah.gov/main/f?p=100:pg:0:::1:T,V:396.

(a) An additional 15% of the fee for tow truck service may be charged if the towed vehicle is used in the transportation of materials found to be hazardous for the purposes of and in accordance with the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations, 49 CFR Part 172, subpart F.

(b) If a tow truck apparatus is mechanically connected to a vehicle, the tow truck motor carrier shall be considered in possession of the vehicle.

(c) If the owner, authorized operator, or authorized agent of the owner of a motor vehicle is attempting to retrieve said vehicle before the tow truck motor carrier is in possession of the vehicle, no fee(s) shall be charged to the vehicle owner.

(d) If the owner, authorized operator, or authorized agent of the owner of the vehicle is attempting to retrieve the vehicle after the tow truck motor carrier is in possession of the vehicle but before the vehicle is removed from the property or scene, the maximum fee shall not exceed 50% of the posted rate schedule.

(e) Charges for recovery operations, as defined by R909-19-3, shall be coordinated with the towed vehicle owner, or directed by law enforcement prior to initiating the additional charges relating to the recovery operation. Coordination with the towed vehicle owner

should result in an agreement between the towed vehicle owner and tow truck motor carrier.

(i) If attempts to coordinate the recovery operation charges with the towed vehicle owner fail, law enforcement personnel may authorize the recovery operation.

(ii) At least two attempts must be made to contact the towed vehicle owner.

(iii) Record of owner coordination or law enforcement authorization shall be maintained by a tow truck motor carrier for each recovery operation. The record shall include contact name, entity, contact time and date, and agreement made.

(iv) Uncoordinated or unauthorized recovery operation fees may be subject to penalty and reimbursement of recovery operation fees.

R909-19-12. Police Generated Towing Fee Calculation.

(1) Tows dispatched during business hours: Tow time shall be calculated from dispatch time to completion of tow service.

(2) Tows dispatched after business hours: Tow time shall be calculated from dispatch time to completion of tow service and return to dispatch location. Time to return to dispatch location shall not exceed allowed rotation response time.

(3) Time charged shall be to the nearest fifteen-minute increment.

(4) Charges may not extend to include the towing notice requirement period pursuant to Utah Code Subsections 72-9-603(1)(a)(i) or 41-6a-1406(4)(a)(ii).

R909-19-13. Non-consent Towing Storage Fee.

(1) Daily storage fees for Non-consent Police generated tow service may not exceed:

(a) Outside storage: light duty $40, medium duty $60, heavy duty $60

(b) Inside Storage: light duty $45, medium duty $85, heavy duty $85

(c) Outside hazardous materials: medium duty $115, heavy duty $115

(d) Inside hazardous materials: medium duty $165, heavy duty $165

(2) Daily storage fees for Non-consent non-police generated tow service may not exceed:

(a) Outside storage: light duty $[~~25~~]40, medium duty $[~~45~~]60, heavy duty $[~~45~~]60

[~~(i) Light duty state approved yard: $40, medium duty $60, heavy duty $60.~~]

(b) Inside Storage: light duty $45, medium duty $85, heavy duty $85

(c) Outside hazardous materials: medium duty $115, heavy duty $115

(d) Inside hazardous materials: medium duty $165, heavy duty $165.

(3) A tow truck motor carrier may charge up to but not exceeding the amount for storage per day for the type of non-consent tow.

(a) A tow truck motor carrier may charge a higher fee for inside storage per day per unit only if requested by the owner(s), or a law enforcement agency or highway authority.

(b) Vehicles used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations, 49 CFR Part 172, subpart F may be charged a higher storage fee rate.

(c) For the purpose of calculating storage rates, if the first six hours of storage for a vehicle includes more than one day, the authorized storage fee is only the charge for one day.

R909-19-14. Non-consent Fuel Surcharge Fee.

(1) A tow truck motor carrier may charge a fuel surcharge when the daily Rocky Mountain Average, as determined by the Department of Energy, for the price of fuel reaches $3.25 per gallon, a tow truck motor carrier may charge a surcharge equal to 5% of the base tow rate. An additional 5% shall be allowed for each $0.25 per gallon increase. Conversely, as the price of fuel drops, the fuel surcharge shall decrease by the same rate.

(a) To determine the Rocky Mountain daily average per gallon diesel cost, refer to the U.S. Energy Information Administration's website at https://www.eia.gov/.

(b) The fuel surcharge may be charged on non-consent police generated tow when the vehicle is being used in the function of a tow vehicle i.e. travel to and from the scene and during the operation of equipment for recovery operation. Non-consent non-police tows may charge a onetime fee.

(c) Surcharge fee shall be listed as a separate fee on the tow bill.

R909-19-15. Non-consent Administrative Fee.

A tow truck motor carrier may charge an administrative fee for reporting the removal of up to but not exceeding the amount indicated in the Towing Fee Schedule as published online at, http://www.udot.utah.gov/main/f?p=100:pg:0:::1:T,V:396 per vehicle notification for reporting non-consent tows to the Department of Motor Vehicles and for sending notifications to the owner and lien-holder (if applicable).

R909-19-16. Tow Truck Service and Administrative Fee Adjustment.

(1) The Motor Carrier Division is required to establish the allowable maximum fee for a tow truck service and administrative fee for reporting the removal, as per Utah State Code 72-9-603.

The Towing Fees Schedule is published on the Division's website at http://www.udot.utah.gov/main/f?p=100:pg:0:::1:T,V:396.

(2) The allowable maximum fee for tow truck service and the maximum allowable administrative fee for reporting the removal shall be tied to the Consumer Price Index for all Urban Wage Earners and Clerical Workers (CPI-W) in the West Urban Region of the U.S. The CPI-W is calculated by the U.S. Department of Labor, Bureau of Labor and Statistics (BLS), which publishes CPI Detailed Report Tables every month on its web site at https://www.bls.gov/cpi/tables/home.htm.

(3) The Motor Carrier Division shall adjust the allowable maximum fees once annually as follows:

(a) The base fee schedule for each calendar year after a year in which the motor Carrier Division determines the allowable maximum fees pursuant to R909-19-11(1) shall be adjusted effective January 1 of each such calendar year (the "Adjustment Date").

(b) The adjustment amount of the allowable maximum fees shall be equal to the change in the CPI-W for the twelve-month period prior to the October CPI-W figure reported by the BLS immediately preceding the Adjustment Date in question.

(c) If the twelve-month change in the CPI-W from October to October is negative, the allowable maximum fees shall remain unchanged until the next Adjustment Date.

(d) The Division of Motor Carriers shall round the allowable maximum fees to the nearest whole number.

R909-19-17. Public Consent Towing and Storage Rates.

Towing rates for public consent tows are the responsibility of the consumer and the tow truck motor carrier as contracted for services rendered and are not regulated by the Department.

R909-19-18. Rates and Storage Posting Requirements.

Pursuant to Section 72-9-603, a tow truck motor carrier or impound yard shall clearly and conspicuously post and disclose all its current non-consent fees and rates for towing and storage of a vehicle at all locations at which vehicles are retrieved, or payment is accepted.

R909-19-19. Federal Motor Carrier Safety Requirements.

All tow truck motor carriers that meet the definition of a commercial motor carrier shall comply with all State and Federal Motor Carrier Safety Regulations, in addition to any other legal requirements established in statute, rule, or permit.

R909-19-20. Consumer Protection Information.

Pursuant to Section 72-9-602, the Department shall make consumer protection information available to the public that may use a tow truck motor carrier. To obtain such information, including a list of tow truck motor carriers that are currently certified by the Department, the public can access this information online at http://www.udot.utah.gov/main/f?p=100:pg:::1:T,V:396, or by calling the Motor Carrier Division at (801) 965-4892.

R909-19-21. Establishment of Tow Truck Steering Committee and Work Group.

(1) The Administrator for the Motor Carrier Division will establish a Steering Committee to provide advisory information and input.

(2) The Motor Carrier Advisory Board, established by the Governor, will serve as the steering body for regulatory guidance and the Department's certification process.

R909-19-22. Review of Rates, Fees and Certification Process.

(1) During a regularly scheduled Motor Carrier Advisory Board meeting, the board may review rates, fees, tow truck motor carrier procedures, and the certification process. The board is not required to review each of these items every year.

(2)(a) Interested parties must notify the department of their desire to appear and be heard at a regularly scheduled Motor Carrier Advisory Board meeting. To ensure placement on the agenda, notify the Motor Carrier Division at 801-965-4892, by the first day of the month of the scheduled meeting.

(b) Interested parties must be present at the Motor Carrier Advisory Board meeting to submit evidence supporting or challenging proposed rate or fee adjustments, or issues related to procedures regarding the certification process.

R909-19-23. Ability to Petition for Review.

Any tow truck motor carrier who believes the Division has acted wrongfully in denying or suspending certification or in imposing a cease-and-desist order may petition the Department for review of that action pursuant to Utah Admin. Code R907-1, Administrative Procedures.

R909-19-24. Record Retention.

Tow truck motor carriers shall retain records relating to rates charged for services for a period of six months after the service has been provided. However, if the Division or the vehicle owner have notified the carrier that it disputes its ability to charge a particular fee, the carrier shall retain the record until six months after the dispute has concluded or a court rule or order requires a longer retention period.

R909-19-25. Life Essential Property.

Property which is deemed as life essential shall be given to the vehicle owner regardless of payment for rendered services.

KEY: safety regulations, tow trucks, towing, certifications
Date of Enactment or Last Substantive Amendment: [~~February 7,~~]2019
Notice of Continuation: June 2, 2016
Authorizing, and Implemented or Interpreted Law: 41-6a-1404; 41-6a-1405; 41-6a-1406; 53-1-106; 53-8-105; 72-9-601; 72-9-602; 72-9-603; 72-9-604; 72-9-301; 72-9-303; 72-9-701; 72-9-702; 72-9-703

Workforce Services, Employment Development
R986-700
Child Care Assistance

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 44157
FILED: 10/29/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: During the 2019 General Session, the Legislature passed S.B. 166, School Readiness Amendments, which moved and renumbered certain provisions related to the High Quality School Readiness Grant Program from the Department of Workforce Services Office of Child Care to the School Readiness Board. The revisions make Section R986-700-755 obsolete. Section R986-700-777 related to the prioritizing criteria Intergenerational Poverty School Readiness Scholarship Program is removed as that program was repealed in S.B. 166 (2019).

SUMMARY OF THE RULE OR CHANGE: The amendment removes Section R986-700-775, High Quality School Readiness Grant Program, and Section R986-700-777, Prioritizing Criteria, in their entirety.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-3-310 and Section 53A-1b-110 and Section 53F-5-210

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The removal of these sections is not expected to have any fiscal impact on state budget revenues or expenditures that were not already accounted for by the fiscal note to S.B. 166 (2019).
♦ LOCAL GOVERNMENTS: The removal of these sections is not expected to have any fiscal impact on local governments' revenues or expenditures that were not already accounted for by the fiscal note to S.B. 166 (2019).
♦ SMALL BUSINESSES: The removal of these sections is not expected to have any fiscal impact on small businesses' revenues or expenditures that were not already accounted for by the fiscal note to S.B. 166 (2019).
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The removal of these sections is not expected to have any fiscal impact on other persons' revenues or expenditures that were not already accounted for by the fiscal note to S.B. 166 (2019).

COMPLIANCE COSTS FOR AFFECTED PERSONS: The removal of these sections will not cause any compliance costs for affected persons.

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

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
WORKFORCE SERVICES
EMPLOYMENT DEVELOPMENT
140 E 300 S
SALT LAKE CITY, UT 84111-2333
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Amanda McPeck by phone at 801-517-4709, or by Internet E-mail at ampeck@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/16/2019

THIS RULE MAY BECOME EFFECTIVE ON: 12/23/2019

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
The removal of these rule sections is not expected to have any fiscal impact on non-small businesses' revenues or expenditures that were not already accounted for by the fiscal note to S.B. 166 (2019).

Jon Pierpont, Executive Director of the Department of Workforce Services, has reviewed and approved this fiscal analysis.

R986. Workforce Services, Employment Development.
R986-700. Child Care Assistance.
[~~R986-700-775. High Quality School Readiness Grant Program.~~
~~(1) The Office of Child Care (OCC) administers this program pursuant to the authority granted in Utah Code Section 53A-1b-106.~~

~~(2) The OCC will solicit proposals from eligible private providers and eligible home-based educational technology providers and make recommendations to the School Readiness Board (SRB) as provided in 53A-1b-106(3).~~

~~(3) Eligible private providers and eligible home-based educational technology providers must submit an application, together with a proposal to the OCC by the date provided in the application.~~

~~(4) The proposal must contain the components outlined in 53A-1b-105(1) or (2) and details as required in 53A-1b-106(7).~~

~~(5) A grant recipient must report annually to the OCC the information required in 53A-1b-106(12) in addition to other information as required by the OCC.~~

~~**R986-700-777. Prioritizing Criteria.**~~

~~If the Department does not receive sufficient funding to award scholarships to all eligible individuals, the Department will award scholarships by ranking eligible children who are considered at the highest risk according to Department policy. A list of the criteria for determining highest risk is available from the Department.~~]

KEY: child care, grant programs
Date of Enactment or Last Substantive Amendment: [~~October 1,~~] 2019
Notice of Continuation: September 3, 2015
Authorizing, and Implemented or Interpreted Law: 35A-3-203(12); 35A-3-310; 53F-5-210

Workforce Services, Housing and Community Development
R990-100
Community Services Block Grant Rules

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 44156
FILED: 10/29/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The reason for this amendment is to make this rule consistent with current federal law and regulations, state law, and existing Department of Workforce Services (Department) policy and procedures; and to clarify processes and procedures for grant applicants and recipients.

SUMMARY OF THE RULE OR CHANGE: This amendment updates legal citations, adds subsections concerning acronyms and definitions, and amends terminology to make it consistent with federal regulation and guidance. This amendment also clarifies subsections concerning: assurances required by the Community Services Block Grant (CSBG) Act, compliance expectations, qualifications, program participant eligibility, funds allocation, the approval process, financial reports and reimbursements, administrative cost, personnel policies, amendments and waivers, program monitoring and evaluations, program reporting requirements, citizen participation, the application process and submission timetable, and budget estimate. This amendment removes the section concerning transfer of funds as that section no longer applies to the program. This amendment removes the section concerning Senate Bill 50 - Sales Tax Refund on Donated Food, as that program has ended. This amendment removes the section concerning general appeals in keeping with federal regulations and guidance, and moves the process for appealing a suspension or termination of funds to the relevant subsection. This amendment reflects current federal law and regulations, state law, and existing Department policy and procedures. This amendment also provides technical, conforming, and stylistic changes in accordance with the Rulewriting Manual for Utah.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-8-1004

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: These proposed rule changes are not expected to have any fiscal impact on state government revenues or expenditures. There are no additional state employees or resources needed to oversee this proposed rule amendment because these changes reflect current law and existing Department policy.
♦ LOCAL GOVERNMENTS: These proposed rule changes are not expected to have any fiscal impact on local governments' revenues or expenditures because the Department is merely changing this rule to reflect current law and existing Department policy.
♦ SMALL BUSINESSES: These proposed rule changes are not expected to have any fiscal impacts on small businesses because the Department is merely changing this rule to reflect current law and existing Department policy. Further, the program does not interact directly or indirectly with small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: These proposed rule changes are not expected to have any fiscal impact on other individuals because the Department is merely changing this rule to reflect current law and existing Department policy.

COMPLIANCE COSTS FOR AFFECTED PERSONS: These proposed rule changes are not expected to cause any compliance costs for affected persons because these proposed rule changes do not create any new administrative fees.

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

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
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 12/16/2019

THIS RULE MAY BECOME EFFECTIVE ON: 12/23/2019

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
These proposed rule changes are not expected to have any fiscal impact on non-small businesses because the Department is merely changing this rule to reflect current law and existing Department policy.

Jon Pierpont, Executive Director of the Department of Workforce Services, has reviewed and approved this fiscal analysis.

R990. Workforce Services, Housing and Community Development.
R990-100. Community Services Block Grant Rules.
R990-100-1. Authority.

This rule is authorized under Section 35A, Chapter 8, Part 10, State Community Services Act[~~-8-1004, U.C.A. 1953~~], which allows the Housing and Community Development Division (HCDD) to receive funds for and to administer federal aid programs.

R990-100-1a Acronyms.

(1) HCDD: Housing and Community Development Division
(2) CSBG: Community Services Block Grant
(3) SCSO: State Community Services Office

R990-100-1b. Definitions.

In addition to the definitions of terms found in Section 35A-8-1002 and the Community Services Block Grant Program, 42 U.S.C. 9902, the following definitions apply to this rule:

(1) "Community Action Programs" means local private and public non-profit organizations that carry out the Community Action Program (CAP), which was founded by the 1964 Economic Opportunity Act to fight poverty by empowering the low-income as part of the War on Poverty.

(2) "CSBG Act" means the Community Opportunities, Accountability, and Training and Educational Services Act of 1998 (also known as the COATES Act, Pub. L. No. 105 et seq., 42 U.S.C. Chapter 106).

R990-100-2. Purpose.

The purpose of this rule is to establish standards and procedures for the Community Services Block Grant [~~(CSBG)~~] authorized under the Community Opportunities, Accountability, and Training and Educational Services Act of 1998 (CSBG Act)[~~Omnibus Reconciliation Act of 1981 (Title XVII, Chapter 2, Sections 671 through 683)~~], contracted to eligible entities (counties or combinations of counties and Community Action Programs) to provide a range of services and activities having a measurable and potentially major impact on causes of poverty in the local communities.

R990-100-3. Eligible Grantees for CSBG Programs and Projects.

(1)[~~A.~~] Utah shall distribute at least 90 percent of available funds as pass-through grants to eligible entities[~~ (hereinafter referred to as local grantees) for them~~] to administer directly or, at the eligible entity's[~~their~~] option, to sub-contract[~~ (hereinafter referred to as local~~

~~sub-grantees)~~], for the performance of eligible activities. Eligibility for the 5 percent discretionary funds will be established by the state plan[~~ each fiscal year~~].

(2)[~~B.~~] When[~~ever~~] a public eligible entity[~~grantee~~] chooses to sub-contract all program operations to a private entity[~~ rather than administer them directly~~], the private entity must be a non-profit organization directed by a board whose composition complies with 42 U.S.C. 9910[~~Section 675 (c)(3) of the Community Services Block Grant Act~~].

R990-100-4. Assurances Required by CSBG Act.

[~~All~~]Each eligible entity[~~grantees~~] shall be required through the application and agreement process to submit a certification of assurances based on CSBG programmatic, administrative and financial requirements of the Act as outlined by CSBG[~~Community Services Block Grant~~] Program Directives prepared by the [~~State Community Services Office (~~]SCSO[~~)~~].

R990-100-5. Compliance.

[~~Local grantees~~]Each eligible entity must maintain its[~~their~~] eligibility to receive CSBG funds by being in compliance with applicable laws, regulations, performance requirements, CSBG organizational standards as defined by the Department of Health and Human Services' Office of Community Services, and contractual agreements. The state reserves the right to examine any[~~all~~] aspects of CSBG funded activities to ensure compliance[~~that this is the case~~].

R990-100-6. Qualifications.

[~~Local grantees~~]Each eligible entity shall [~~must~~] demonstrate that it has[~~they have~~] in place, or shall have in place before[~~prior to~~] undertaking CSBG funded program activities, management systems adequate to ensure that CSBG funds are[~~shall be~~] spent efficiently and effectively. When activities are sub-contracted, the [~~local grantee~~]eligible entity shall [~~must~~]have in place a system and assume the responsibility for monitoring and evaluating sub-contracts. Files must be retained containing the[~~such~~] monitoring and evaluation results and be available for the State's review for at least three years after the completion of the contract. In no case shall the state provide funds to a grantee if available evidence suggests that the grantee cannot fulfill its obligations under the terms of the assurances required by the CSBG Act and the state plan for the use of CSBG funds.

R990-100-7. Program Participant Eligibility.

Income eligibility at or below 125% of the federal poverty level for program participation shall be based on the Office of Management and Budget official poverty guidelines as described in 42 U.S.C. 9902[~~Section 673 of the CSBG Act~~]. Income verification shall be consistent with the income verification policy established by SCSO.

R990-100-8. Funds Allocation.

(1)[~~A.~~] CSBG funds shall be allocated on the basis of federal fiscal years beginning October 1 to [~~local agencies~~]eligible entities by the following formula:

(a[~~1~~]) [~~All agencies~~]Each eligible entity selected for funding shall be awarded an equal, minimum base amount.

(b[~~2~~]) The amount remaining after subtraction of the sum of the minimum base amount shall be allocated among the [~~local grantees~~]eligible entities based on a poverty formula developed by SCSO[~~the census counts (or updates) of low-income residents and other related criteria such as long-term unemployment~~].

R990-100-9. Approval Process.

Criteria shall be used to review applications for CSBG funds and shall be distributed to eligible [~~grantees~~]entities as [~~a~~]SCSO [~~Community Services Block Grant~~]Program Directives. Each eligible entity shall annually submit an application and community action plan based on needs identified within the community. Application and action plans are reviewed by SCSO staff for consistency with program requirements and community needs.[~~A panel will screen and give a numerical rating to every application submitted by an eligible grantee based on the criteria outlined. The Community Services Office will compile these ratings and will make a final determination as to proposals that will receive funding and as to the level of funding that will be provided. Proposals must score a minimum number of points to be considered eligible.~~] [~~Prospective~~]A CSBG [~~grantees~~]eligible entity shall be notified of application status [~~60~~]30 days or less after the closing date of application submissions. Any application found to be incomplete or inadequate will be returned to the [~~local grantee~~]eligible entity for appropriate changes. The [~~Community Services Office~~]SCSO will provide technical assistance to any eligible [~~agency scoring below the minimum~~]entity that demonstrates need throughout the application process.

R990-100-10. Award Procedures.

The state shall [~~enter into a~~]contract with [~~local grantees~~]an eligible entity on October 1 contingent upon Federal authorization and appropriation for CSBG. Once signed, this contract shall be binding on both parties.

R990-100-11. Fiscal Operations Procedures.

(1)[~~A.~~] Each [~~local grantee~~]eligible entity shall have an acceptable procedure describing functions of its fiscal office and including at a minimum:

(a[~~1~~]) Purchasing procedure,

(b[~~2~~]) System of cash control,

(c[~~3~~]) Payroll system, and

(d[~~4~~]) Internal and external reporting systems.

(2)[~~B.~~] Fiscal procedures shall be in compliance with applicable state and federal regulations, including 45 CFR Part 75, and conform with generally accepted accounting procedures.

R990-100-12. Financial Reports and Reimbursements.

(1) Financial reports [~~(Form CSBG-611-D) ~~]are to be submitted on a [~~monthly~~]no more frequently than monthly and no less frequently than quarterly basis[~~, no later than twenty (20) days following the end of each month~~].

(2) [~~Local grantees~~]Each eligible entity shall receive reimbursement based on a monthly financial status report and certification of work program activities.

(3) Each[~~All~~] report[~~s~~] must be signed by either:[~~have an authorized signature, i.e.,~~]

(a) the contract signatory, or

(b) someone designated by the signatory, with a letter of designation filed with the state.

(4) Final reimbursement requests shall be due by the date stipulated by SCSO contract.

R990-100-13. Administrative Cost.

Administrative costs include allowable expenditures, as per 45 CFR Part 75, incurred to administer the CSBG through an indirect cost rate[~~plan~~], approved by a cognizant Federal Agency or a cost allocation plan approved by the SCSO.[~~Such costs should not exceed 10%.~~]

R990-100-14. Travel and Per Diem.

Travel, per diem, and allowances for staff and board members shall be determined by approved [~~local agency~~]eligible entity guidelines which establish rates of reimbursement.

R990-100-15. Purchasing, Receiving and Accounts Payable.

(1)[~~A.~~] [~~Grantee agencies~~]An eligible entity shall develop and have approved procedures for handling purchasing, receiving, and accounts payable that comply with 45 CFR Part 75. [~~(~~]In the absence of a local procedure, the state procedure shall be followed.[~~)~~] These procedures shall[~~should~~] include:

(a[~~1~~]) Pre-numbered purchase orders and[~~/or~~] vouchers for any[~~all~~] items of cost and expense.

(b[~~2~~]) Procedures to insure procurement at competitive prices.

(c[~~3~~]) Receiving reports to control the receipt of merchandise.

(d[~~4~~]) Effective review following prescribed procedures for program coding, pricing and extending vendors' invoices.

(e[~~5~~]) Invoices matched with purchase orders and receiving reports.

(f[~~6~~]) [~~The local grantee must have a~~]Adequate controls, such as checklists for statement - closing procedures to insure that open invoices and uninvolved amounts for goods and services are properly accrued or recorded in the books or controlled through worksheet entries.

(g[~~7~~]) Adequate segregation of duties in that different individuals are responsible for:

(i[~~a~~]) Purchase;

(ii[~~b~~]) Receipt of merchandise or services; and

(iii[e]) Voucher approval.

(2)[~~B.~~] A list of anticipated equipment purchases must accompany the application for funding. Purchases over $1,000 must receive written state approval.

R990-100-16. Property and Equipment.

(1)[~~A.~~] Each [~~local grantee~~]eligible entity shall develop procedures for control of property and equipment that comply with 45 CFR Part 75. These procedures shall[~~should~~] include; but are not limited to:

(a[~~1~~]) An effective system of authorization and approval of equipment purchase;

(b[~~2~~]) Accounting practices for recording assets;

(c[~~3~~]) Detailed records of individual assets which are maintained and periodically balanced with the general ledger accounts;

(d[~~4~~]) Effective procedures for authorizing and accounting for equipment disposal; and

(e[~~5~~]) Secure storage of property and equipment.

R990-100-17. Purchase or Improvement of Land or Buildings.

Funds shall not be used for purchase or improvement of land, or the purchase, construction, or permanent improvement [~~(~~]other than low-cost residential weatherization or other energy related home repairs[~~)~~] of any building or other facility except as this prohibition may be waived under conditions described in 42 U.S.C. 9918[~~Section 680 (b) of the CSBG act~~].

R990-100-18. Personnel Policies.

(1)[~~A.~~] Each [~~local grantee~~]eligible entity shall maintain written personnel policies, available for review, which shall[~~should~~] include:

(a[~~1~~]) Classification and pay plan;

(b[~~2~~]) Policies governing selection, [~~and~~]appointment, and written evaluation;

(c[~~3~~]) Conditions of employment and employee performance;

(d[~~4~~]) Employee benefits;

(e[~~5~~]) Employee-management relations including procedures for filing and handling grievances, complaints and rights of appeal;

(f[~~6~~]) Personnel records and payroll procedures;

(g[~~7~~]) Job description for each[~~all~~] position[~~s~~];

(h[~~8~~]) Drug Free Work Place Policy[~~.~~]; and

(i) Whistle Blower Policy.

R990-100-19. Civil Rights.

(1)[~~A.~~] [~~All~~]Any CSBG funded program[~~s~~] shall comply with the nondiscrimination provisions contained in 42 U.S.C. 9918[~~Section 677 of the Community Services Act~~].

(2)[~~B.~~] [~~Local grantees~~]An eligible entity shall be required to have on file an affirmative action plan that describes what the[~~y~~] entity will do to ensure that current and prospective employees and program participants are treated in a non-discriminatory manner. This plan shall also include a grievance procedure to address[~~deal with~~] allegations of discrimination by[~~on the part of~~] prospective and current staff members or program participants.

(3)[~~C.~~] The provisions of this section shall apply to each[~~any and all~~] grantee[~~s~~] and sub-grantee[~~s~~], except where special conditions apply, i.e., Indians, migrants, or seasonal farm workers.

R990-100-20. Prohibition of Political Activities.

Each [~~CSBG grantee~~]eligible entity shall be responsible for assuring adherence to political activity prohibitions contained in 42 U.S.C. 9918[~~Sec. 675 (c) (7) of the CSBG Act~~]. Monitoring of any sub-grantees shall be required as a part of the eligible entity's administrative responsibilities. A description of this process is to be available for state review during monitoring visits or upon request. Violations of the prohibitions are to be reported to the [~~state~~]SCSO immediately along with reports of measures taken by the [~~grantee~~]eligible entity to restore compliance.

R990-100-21. Audits and Inspection.

Each [~~local grantee~~]eligible entity shall have performed by an independent certified public accounting firm an annual audit that conforms with the provisions and requirements of [~~OMB Circular A-128, A-122 and A-133~~]45 CFR Part 75, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards. The audit shall be due no later than one year following the end of the grantee's fiscal year.

R990-100-22. Suspension or Termination of Funds.

(1)[~~A.~~] [~~HCD may suspend funding to a local grantee i~~]If monitoring reports or independent audit reports show[~~indicate~~] continuing, substantial non-compliance with contract requirements, accounting procedures, or fiscal control requirements, HCDD may request the eligible entity to submit and implement a Quality Improvement Plan within 60 days of notice of deficiency. [~~If problems identified are not corrected within a reasonable length of time, but not to exceed 60 days, HCD may terminate its contract with local grantee and make the remaining funds available to other eligible entities.~~] Action to suspend or terminate funding will not be taken, however, unless timely and reasonable communication with the [~~local grantee~~]eligible entity fails to produce corrective action to HCDD's satisfaction. The [~~local grantee~~]eligible entity shall not be relieved of liability to the state for funds expended for improper purpose or federal audit exceptions sustained by the state by virtue of any breach of the contract by the agency, and the state may withhold or recover any payments to the [~~grantee~~]eligible entity [~~for the purpose of setoff~~]until [~~such time as~~]the exact amount of damage due the state from the [~~grantee~~]eligible entity is determined.

(2)[~~B.~~] Pursuant to the provisions of the contract between the state and [~~local grantee~~]eligible entity, delegation of funds and activities to others may not be made without prior approval of HCDD, SCSO.

(3) If HCDD takes action to suspend or terminate funding to an eligible entity, HCDD will issue a notice of agency action detailing the reasoning for terminating or suspending funding, including information concerning any Quality Improvement Plan and communication concerning the failure to produce correction action.

(4) An entity that receives a notice of agency action may request a hearing on the record, pursuant to 42 U.S.C. 9908(b)(8).

(a) The request for hearing must be in writing, approved and signed by the entity's elected officials, and must set forth the grounds for the request.

(b) The request for hearing must be filed with Department of Workforce Services Division of Adjudication within 30 calendar days from the date of the notice of agency action.

(c) In computing the time allowed for filing a request for hearing, the date as it appears in the notice of agency action is not included. The last day of the request period is included in the computation unless it is a Saturday, Sunday, or legal holiday when the offices of the Department are closed. If the last day permitted for filing an request falls on a Saturday, Sunday, or legal holiday, the time permitted for filing a appeal will be extended to the next day when the Department offices are open.

(d) The date of receipt of a request is the date the request is actually received by the Department of Workforce Services Division of Adjudication, as shown by the Department's date stamp on the document or other credible evidence such as a written or electronic notation of the date of receipt, and not the post mark date from the post office. If the appeal is faxed to the Department of Workforce Services Division of Adjudication, the date of receipt is the date recorded on the fax.

(e) If an eligible entity does not request a hearing within the 30-day limit, the notice of agency action will be effective at the end of the 30 days.

(5) The hearing on the record will be conducted in accordance with the procedures outlined in R986-100-124 through R986-100-133.

(6) If the eligible entity disagrees with the Administrative Law Judge decision, the entity may appeal to the Department of Workforce Services Executive Director or person designated by the Executive Director. The appeal must be filed, in writing, within 30 days of the issuance of the decision of the Administrative Law Judge.

(a) The decision by the Department of Workforce Services Executive Director or person designated by the Executive Director, constitutes the final agency decision.

(7) If the eligible entity disagrees with a final agency decision to terminate funding, it may appeal to the Secretary of the U.S. Department of Health and Human Services, as provided in 45 C.F.R. 96.92.

(a) Pursuant to 45 C.F.R. 96.92, if an eligible entity has made a request for review, SCSO may not discontinue current or future funding until the U.S. Department of Health and Human Services confirms the final agency decision.

(b) Pursuant to 45 C.F.R. 96.92, if an eligible entity does not make a request for review within the 30-day limit, the final agency decision will be effective at the end of the 30 days.

[**~~R990-100-23. Transfer of Funds.~~**

~~Because of the limited funds anticipated to be made available, HCD shall not transfer any of the CSBG to eligible entities under the Older Americans Act of 1965, Head Start, or Low-income Home Energy Assistance, nor consider a grantee in compliance if such transfers are made locally.~~]

R990-100-24. Amendments/Waivers.

[~~A. Prior approval for budget changes is required in the following instances:~~

~~(1) The dollar amount of transfers among budget categories exceeds or is expected to exceed $10,000 or five percent of the grant budget, whichever is greater, for grants of $100,000 or larger.~~

~~(2) For grants under $100,000, approval is required if transfers exceed or are expected to exceed five percent of the grant budget.~~

~~(3) Limited flexibility in budget adjustments will be allowed as follows (submit informational copies of adjusted CSBG forms to SCSO):~~

~~(a) Rebudgeted funds within the Personnel Services portion of their CSBG budget;~~

~~(b) Rebudgeted funds within the Supportive Services portion of their CSBG budget;~~

~~(c) On a one-time basis, allowable transfers from the Personnel Services budget to Supportive Services;~~

~~(d) On a one-time basis, allowable transfers from the Supportive Services budget to Personnel Services;~~

~~B. Program goals may be amended by submitting changes for approval on appropriate CSBG forms. At any point during the program year it appears that a goal may be achieved at less than 90%, a program and budget amendment must be submitted for approval.~~

~~C. Grantees~~]An eligible entity may [~~also~~]request contract period end dates be extended for up to 180[~~sixty (60)~~] days [~~in order~~]

to spend program or project carryover funds amounting to less than ten [~~(10)~~]percent, or an amount approved by the state, of the total contract amount.

R990-100-25. [~~Project~~]Program Monitoring and Evaluations.

(1)[~~A.~~] Monitoring will be accomplished through review of the fiscal, programmatic, and progress reports and on-site visits. On-site visits shall automatically be initiated in response to a written complaint of financial or programmatic non-compliance.

(a) Monitoring will relate to eligible entity compliance with federal assurances and federal and state requirements in program management and operation.

(2)[~~B.~~] Evaluation of CSBG funded programs shall be conducted [~~either~~]by the state or by the [~~local CSBG grantees~~]eligible entity and shall be distinct from both compliance monitoring and the state's examination of a CSBG [~~grantees~~]eligible entity to ensure the entity is[~~that they are~~] eligible to receive CSBG funds and [~~that they are~~]is in compliance with any[~~all~~] CSBG related obligations.

(a) Evaluation will involve an attempt to measure program performance project results, and to determine the impact of an eligible entity's efforts.

(b) For the most part, CSBG evaluations will be a joint state/local effort, but the state reserves the right to conduct evaluations of CSBG programs at any time for purposes it considers appropriate. In these circumstances, reasonable efforts will be made to accommodate the concerns of any eligible entity that is involved. [~~Monitoring will relate to grantee compliance with federal assurances and state requirements in program management and operation. Evaluation will involve an attempt to measure program performance project results, and to determine the impact a grantee's efforts have had on the causes of a problem being addressed and on the problem itself.~~

~~C. For the most part, CSBG evaluations will be a joint state/local effort, but the state does reserve the right to conduct evaluations of CSBG programs at any time for purposes it deems appropriate. In such cases, reasonable efforts will be made to accommodate the concerns of any local grantee that is involved.~~]

R990-100-26. Program Reporting Requirements.

[~~Local grantees~~]An eligible entity shall[~~be required to~~] maintain client profile records[~~sheets~~] on individual clients, households or groups of clients, if appropriate. A compiled report of the number and characteristics of clients served[~~, by category,~~] shall be submitted to SCSO on an annual basis by the SCSO stated due date[~~the prescribed CSBG Form thirty (30) days after the end of each quarter of the program period. The program progress report is also due at the same time~~].

[~~R990-100-27. Appeals Procedure.~~

~~A. Grantees identified in the state plan as eligible to receive funding from the Community Services Block Grant can use the following procedure to appeal decisions made by the State Community Services Office in regards to program and funding.~~

~~B. Any substantive decision of SCSO which a local grantee believes to be unfair or unreasonable and having a major adverse impact on the local program, may be appealed by the grantee. The appeal process is as follows:~~

~~(1) Within fifteen (15) days of receipt of a SCSO decision that is believed to be unfair or unreasonable, the grantee believing itself to be aggrieved must submit a letter to the executive director of DWS or designee, approved and signed by its elected officials, setting forth:~~

~~(a) The decision that is being questioned;~~

~~(b) The date on which the grantee received notice of the decision;~~

~~(c) The rationale of the grantee for considering the decision to be substantial and unfair or unreasonable to the grantee;~~

~~(d) A request for a hearing, including a statement as to the desired outcome of such a hearing.~~

~~(2) Within ten (10) working days of the receipt of the grantee's request for a hearing, the executive director shall name a hearing officer, who shall schedule a hearing date no later than two (2) weeks after being so named and will notify the appellant grantee. The hearing officer will be independent of HCD.~~

~~(3) Prior to the scheduled hearing, the SCSO staff shall contact the Board of Directors of the appellant grantee:~~

~~(a) To obtain additional information pertinent to the issue;~~

~~(b) To clarify any misunderstanding of fact or policy;~~

~~(c) To explore possible alternatives that would eliminate the necessity for a hearing;~~

~~(d) To obtain a written withdrawal of the request for a hearing if the issue is resolved through negotiation.~~

~~(4) The hearing, should there be one, shall be conducted by the hearing officer. The appellant grantee may be represented by whomever it chooses at the hearing, but must notify HCD at least five (5) working days prior to the hearing who that person will be.~~

~~(5) The hearing officer shall review all testimony and evidence presented at the hearing and recommend a decision to the DWS Executive Director or designee. The DWS Executive Director or designee shall issue a written decision on the appeal within 10 working days after receipt of the hearing officer's recommendations.~~

~~(6) The decision resulting from the hearing shall be final. Any necessary hearings shall be held in Salt Lake City or at a site more convenient to the appellant agency, at the discretion of the Executive Director of DWS.~~]

R990-100-28. Citizen Participation.

(1)[~~A.~~] The state requires citizen participation and supports maximum participation of any[~~all~~] interested persons and groups in the development and implementation of the CSBG programs at the state and local level, in advisory or administering capacity.

(2[~~1~~])[~~.~~] Tripartite boards are required for governing boards of private, non-profit organizations and for the administering/advisory boards of public agencies and shall conform to the requirements outlined in 42 U.S.C. 9910[~~Sec. 675 (c) (3)~~].

(a)[~~.~~] A minimum of one third of the board is to represent low income. A description of the democratic selection process for representatives of the low-income[~~poor~~] is to be available for review.

(b)[~~.~~] One third of the members of the board are to be elected public officials, currently holding office, or their representatives, except if not enough public officials are willing or available, appointed public officials may serve. Minutes of meetings or letters of appointment must be on file for review.

(c)[~~.~~] The remaining[~~der of the~~] members are to be officials or members of business, industry, labor, religious, welfare, education or other major groups in the community. A description of the process used for selection of private sector representatives is to be available for review. The description shall[~~should~~] include a process for interested

private sector groups to petition for membership and how the petition will be considered.

(2)[~~B.~~] As a part of the community needs[~~problem~~] assessment portion of the planning phase (conducted every three years), each eligible entity[~~local agency~~] shall conduct public forums for low-income residents of the areas. These forums are to allow a discussion and listing of problems as viewed by the low-income and their suggestions for solutions.

R990-100-29. Federal Program Regulations.

The CSBG is subject to regulations periodically published in the Federal Register.

R990-100-30. Required Documentation and Forms.

The required application, budget and reporting forms shall be designated through SCSO CSBG[~~Community Services Block Grant~~] Program Directives.

R990-100-31. Application Process and Submission Timetable.

(1)[~~A.~~] The grant application phase of CSBG for [~~local grantees~~]eligible entities involves:

(a[~~1~~]) A community needs assessment[~~local poverty problem identification process~~] developed under prescribed criteria outlined in a CSBG[~~Community Services Block Grant~~] Program Directives, problem analysis, resource analysis, service delivery system description, prioritization process and coordination policy process with appropriate documentation submitted to SCSO by the date published by the SCSO[~~May 15~~] every three [~~(3)~~] years, starting in 1998;

(b[~~2~~]) The development of a community action plan[~~work program~~] for addressing problems identified and prioritized includes;

(i[~~a~~]) Community review of the draft community action plan[~~work program~~];

(ii[~~b~~]) Approval of final plan by local boards or by local officials;

(iii[e]) Submission of the plan to SCSO[~~state office~~] by the date published by the SCSO[~~June 30 of each year~~].

(c[~~3~~]) As part of the application package, the applicant must submit an administrative budget separate from the program operation budget.

R990-100-32. Budget Estimate.

[~~By May 1~~]Following receipt of federal continuing resolution or budget information, the state shall make available to eligible applicants, an estimate of funding amounts for each geographical area, based on the formula contained in the State Plan.

R990-100-33. Public Review and Comment.

(1)[~~A.~~] After the community action plan[~~work program~~] has been prepared, but before Board approval, the applicant must provide ample opportunity for its[~~'~~] review by low-income residents, the community as a whole, and relevant community organizations and agencies. Notice of the availability of the application for citizen review and comment shall also be given by providing written notice to organizations and agencies, to the local media, and posting of notice in public places convenient to low-income residents. The eligible entity[~~grantee~~] must submit any[~~all of the~~] comments of persons and organizations choosing to respond with the application to the SCSO[~~State Office of Community Services~~].

[~~R990-100-34. Senate Bill 50 - Sales Tax Refund on Donated Food.~~

~~A. The State Community Services Office shall:~~

~~(1) Provide definitions for certification and de-certification of eligible agencies to receive the sales tax refund;~~

~~(2) Provide criteria for an organization to apply for recognition as a qualified emergency food agency;~~

~~(3) Provide procedures to be used in the certifying and de-certifying of agencies for Rules and Procedure infractions;~~

~~(4) Provide standards for determining and verifying the amount of the donated food;~~

~~(5) Certify organizations to receive the Sales Tax Refund to the State Tax Commission;~~

~~(6) Provide monitoring to insure certified agencies maintain required weighing capabilities and inventory records;~~

~~(7) Develop other procedures necessary to implement Senate Bill 50 in consultation with the State Tax Commission.~~]

KEY: antipoverty programs, grants, community action programs[~~, food sales tax refunds~~]
Date of Enactment or Last Substantive Amendment: [~~July 9, 2012~~]2019
Notice of Continuation: July 6, 2017
Authorizing, and Implemented or Interpreted Law: 35A-8-1004

Workforce Services, School Readiness Board

R995-100

School Readiness Board

NOTICE OF PROPOSED RULE

(New Rule)
DAR FILE NO.: 44165
FILED: 10/30/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: During the 2019 General Session, the Legislature passed S.B. 166, School Readiness Amendments, which moved and renumbered provisions related to the High Quality School Readiness Program and the School Readiness Initiative and enacted, under the School Readiness Board (SRB) within the Department of Workforce Services, Title 35A, Chapter 15, Preschool Programs. S.B. 166 (2019) directed the SRB to enact certain rules related to administering and monitoring preschool grant programs and implementing the tool used to determine whether a preschool program is high quality.

SUMMARY OF THE RULE OR CHANGE: This rule explains the role of the Department of Workforce Services in supporting the SRB and developing grant documentation for various school readiness grants. This rule describes how the Becoming High Quality School Readiness Grant and the Expanded Student Access to High Quality School Readiness Programs Grant will be assessed and monitored. This rule

describes how the SRB will implement the tool used to determine whether a preschool program is high quality.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-15-301 and Section 35A-15-302

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: This rule is not expected to have any fiscal impact on state budget revenues or expenditures that were not already accounted for by the fiscal note to S.B. 166 (2019).
♦ LOCAL GOVERNMENTS: This rule is not expected to have any fiscal impact on local governments' revenues or expenditures that were not already accounted for by the fiscal note to S.B. 166 (2019).
♦ SMALL BUSINESSES: This rule is not expected to have any fiscal impact on small businesses' revenues or expenditures that were not already accounted for by the fiscal note to S.B. 166 (2019).
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This rule is not expected to have any fiscal impact on other persons' revenues or expenditures that were not already accounted for by the fiscal note to S.B. 166 (2019).

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule is not expected to cause any compliance costs for affected persons because this proposed rule does not create any new administrative fees.

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

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
WORKFORCE SERVICES
SCHOOL READINESS BOARD
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 12/16/2019

THIS RULE MAY BECOME EFFECTIVE ON: 12/23/2019

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
This rule is not expected to have any fiscal impact on non-small businesses' revenues or expenditures that were not already accounted for by the fiscal note to S.B. 166 (2019).

Jon Pierpont, Executive Director of the Department of Workforce Services, has reviewed and approved this fiscal analysis.

R995. Workforce Services, School Readiness Board.
R995-100. School Readiness Board.
R955-100-100. Purpose.
This rule describes the processes and procedures used by the School Readiness Board to administer and monitor the

preschool grant programs in Title 35A, Chapter 15, Preschool Programs, and to implement the tool used to determine whether a preschool program is high quality.

R955-100-101. Authority.

This rule is required by Sections 35A-3-301(9) and 35A-3-302(10) and is enacted under the authority of Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

R955-100-102. Definitions.

(1) The terms used in this rule are defined in 35A-15-102.

(2) In addition:

(a) "Department" means the Department of Workforce Services.

(b) "OCC" means the Department of Workforce Services, Office of Child Care.

(c) "SRB" means School Readiness Board.

R955-100-103. Role of Department.

(1) The Department provides staff support to the SRB pursuant to Section 35A-15-201(4).

(2) Department staff shall develop grant documentation in consultation with the SRB.

R955-100-200. Becoming High Quality School Readiness Grant Program.

(1) During each program year, grant recipients shall administer and report results of the assessments required in the grant agreement.

(a) If a grant recipient fails to administer and report the results of the required assessments, the recipient shall be placed on a performance improvement plan.

(b) If a grant recipient fails to comply with the performance improvement plan, the recipient may be ineligible to receive additional reimbursements or future grant funding.

(2) Grant recipients will be subject to monitoring and reporting requirements as required by the Department and OCC under guidance from the SRB.

(a) Grant recipients shall submit the annual reports required by Sections 35A-15-301(7) and 35A-15-301(8) following the instructions contained in the grant agreement.

(b) Grant recipients shall submit any other reports, including quarterly reports, as provided in the grant agreement.

(c) If a grant recipient fails to submit required reports, the recipient shall be placed on a performance improvement plan.

(d) If a grant recipient fails to comply with the performance improvement plan, the recipient may be ineligible to receive additional reimbursements or future grant funding.

(3) Grants shall be monitored in accordance with Department grant monitoring policy and procedure.

(a) Monitoring may include but is not limited to fiscal operations, and the terms, conditions, attachments, scope of work, and performance requirements of the grant agreement.

(b) Monitoring may include, but is not limited to, both announced and unannounced site visits, desk audit, third party monitoring, expenditure document review and/or video/phone conferencing. Any onsite monitoring will take place during normal business hours.

(c) A grant recipient who fails to comply with monitoring may be placed on a performance improvement plan.

(d) If the Department determines a grant recipient is not in compliance with the grant agreement, the recipient may be placed on a performance improvement plan or the agreement may be terminated in accordance with the terms of the grant agreement.

(e) If a grant recipient fails to comply with a performance improvement plan, the recipient may be ineligible to receive additional reimbursements or future grant funding.

R955-100-300. Expanded Student Access to High Quality School Readiness Programs Grant Program.

(1) The SRB will select an evidence-based tool as required in Section 35A-15-303(4)(a) to determine whether a school readiness program is high quality.

(2) The SRB will implement the tool in accordance with best practices as defined by the tool's creator.

(3) Grants shall be administered and monitored in accordance with Department policy and procedure.

(a) Monitoring may include but is not limited to fiscal operations, and the terms, conditions, attachments, scope of work, and performance requirements of the grant agreement.

(b) Monitoring may include, but is not limited to, both announced and unannounced site visits, desk audit, third party monitoring, expenditure document review and/or video/phone conferencing. Any onsite monitoring will take place during normal business hours.

(c) A grant recipient who fails to comply with monitoring may be placed on a performance improvement plan.

(d) If the Department determines a grant recipient is not in compliance with the grant agreement, the recipient may be placed on a performance improvement plan or the agreement may be terminated in accordance with the terms of the grant agreement.

(i) If a grant recipient fails to comply with a performance improvement plan, the recipient may be ineligible to receive additional reimbursements or future grant funding.

KEY: preschool, grant programs
Date of Enactment or Last Substantive Amendment: 2019
Authorizing, and Implemented or Interpreted Law: 35A-15-301; 35A-15-302

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.

Auditor, Administration
R123-6
Allocation of Money in the Property Tax Valuation Agency Fund

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 44150
FILED: 10/28/2019

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 59-2-1603 authorizes the State Auditor to: 1) make determinations related to the costs associated with assessing and collecting property taxes, and 2) set rules related to the allocation of money in the Property Tax Valuation Agency Fund.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received during and since the last five-year review of this rule from interested persons supporting or opposing the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The State Auditor continues to be charged with the duties outlined in Section 59-2-1603. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
AUDITOR
ADMINISTRATION
ROOM E310 EAST BUILDING
420 N STATE ST
SALT LAKE CITY, UT 84114-2310
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Linda Siebenhaar by phone at 801-538-1383, or by Internet E-mail at lsiebenhaar@utah.gov

AUTHORIZED BY: Tauna MacPherson, Administrative Assistant

EFFECTIVE: 10/28/2019

Natural Resources; Forestry, Fire and State Lands
R652-120
Wildland Fire Responsibilities

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 44149
FILED: 10/24/2019

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 adopted pursuant to

the authority of Subsection 65A-1-4(2), which requires the Division of Forestry, Fire and State Lands (Division) to promulgate rules, and by Section 65A-8-101 et seq., which requires the Division to determine and execute the best method for fire control and the preservation of forest, watershed, and other lands, and to enter into agreements related to fire protection.

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 regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule outlines the responsibilities of the Division in consultation with local authorities to determine and execute the best method for protecting private and public property with regard to fire control and the preservation of forest watershed, and other lands; along with the authority to enter into cooperative agreements related to fire protection. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
FORESTRY, FIRE AND STATE LANDS
1594 W NORTH TEMPLE STE 3520
SALT LAKE CITY, UT 84116-3154
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Jamie Phillips-Barnes by phone at 801-538-5421, by FAX at 801-533-4111, or by Internet E-mail at jamiebarnes@utah.gov

AUTHORIZED BY: Brian Cottam, Director

EFFECTIVE: 10/24/2019

Natural Resources, Wildlife Resources
R657-69
Turkey Depredation

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 44145
FILED: 10/22/2019

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Under Sections 23-14-18, 23-14-19, and 23-17-9, the Wildlife Board is authorized and required to regulate and prescribe the means for the turkey depredation program.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments supporting or opposing Rule R657-69 were received since November 2014, when the rule was created.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R657-69 provides the procedures for responding to and verifying reports of material damage caused by turkey; the procedures, standards, requirements, and limits for addressing instances of material damage caused by turkeys; and a description of the various hunts that may be held to minimize future instances of material damage caused by turkeys. This rule is needed for the continued success of the turkey depredation program. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

AUTHORIZED BY: Mike Fowlks, Director

EFFECTIVE: 10/22/2019

Public Safety, Criminal Investigations and Technical Services, Criminal Identification
R722-310
Regulation of Bail Bond Recovery and Enforcement Agents

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 44160
FILED: 10/30/2019

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized by Subsection 53-11-103(5), which allows the commissioner of the Department of Public Safety to make rules as necessary to administer Title 53, Chapter 11, Bail Bond Recovery 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: No written comments were received during and since the last five-year review of this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is authorized under Subsection 53-11-103(5), and is necessary in order to outline application, training, and licensing and renewal requirements for bail bond licenses, identification of licensees, and the adjudicative process with regards to bail bond licenses. Therefore, this rule should be continued.

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

PUBLIC SAFETY
CRIMINAL INVESTIGATIONS AND TECHNICAL SERVICES, CRIMINAL IDENTIFICATION
3888 W 5400 S
TAYLORSVILLE, UT 84118
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Greg Willmore by phone at 801-965-4533, or by Internet E-mail at gwillmor@utah.gov
♦ Kim Gibb by phone at 801-556-8198, by FAX at 801-964-4482, or by Internet E-mail at kgibb@utah.gov
♦ Nicole Borgeson by phone at 801-281-5072, or by Internet E-mail at nshepherd@utah.gov

AUTHORIZED BY: Greg Willmore, Division Director

EFFECTIVE: 10/30/2019

Public Safety, Criminal Investigations and Technical Services, Criminal Identification

R722-330

Licensing of Private Investigators

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 44161
FILED: 10/30/2019

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized by Subsection 53-9-103(6), which allows for the Commissioner of the Department of Public Safety to make rules governing the administration of the provisions of Title 53, Chapter 9, Private Investigator Regulation 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: No written comments were received during and since the last five-year review of this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is authorized under Subsection 53-9-103(6), and is needed in order to outline the process for application, issuance, and renewal of a private investigator license; suspension or revocation of a license; and the classification of records compiled in connection with an investigation or a complaint. Therefore, this rule should be continued.

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

PUBLIC SAFETY
CRIMINAL INVESTIGATIONS AND TECHNICAL SERVICES, CRIMINAL IDENTIFICATION
3888 W 5400 S
TAYLORSVILLE, UT 84118
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Greg Willmore by phone at 801-965-4533, or by Internet E-mail at gwillmor@utah.gov
♦ Kim Gibb by phone at 801-556-8198, by FAX at 801-964-4482, or by Internet E-mail at kgibb@utah.gov
♦ Nicole Borgeson by phone at 801-281-5072, or by Internet E-mail at nshepherd@utah.gov

AUTHORIZED BY: Greg Willmore, Division Director

EFFECTIVE: 10/30/2019

Public Safety, Criminal Investigations and Technical Services, Criminal Identification
R722-380
Firearm Background Check Information

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 44162
FILED: 10/30/2019

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized by Subsection 76-10-526(11), which requires the Division of Criminal Investigations and Technical Services (Division) to make rules to ensure the identity, confidentiality, and security of all records provided by the Bureau of Criminal Identification (Bureau) under this part are in conformance with the requirements of the Brady Handgun Violence Prevention Act, Pub. L. No. 103-159, 107 Stat. 1536 (1993).

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no written comments received during and since the last five-year of this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is required under Subsection 76-10-526(11), and is necessary in order to outline the process for completion of a background check for a firearm purchase or transfer, the circumstances under which an individual may appeal a decision made by the Bureau, the process for law enforcement to request a background check prior to the release of a firearm in their custody, and the process for a background check for registration or transfer of an National Firearms Act (NFA) firearm. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
PUBLIC SAFETY
CRIMINAL INVESTIGATIONS AND TECHNICAL SERVICES, CRIMINAL IDENTIFICATION
3888 W 5400 S
TAYLORSVILLE, UT 84118
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Greg Willmore by phone at 801-965-4533, or by Internet E-mail at gwillmor@utah.gov
♦ Kim Gibb by phone at 801-556-8198, by FAX at 801-964-4482, or by Internet E-mail at kgibb@utah.gov
♦ Nicole Borgeson by phone at 801-281-5072, or by Internet E-mail at nshepherd@utah.gov

AUTHORIZED BY: Greg Willmore, Division Director

EFFECTIVE: 10/30/2019

Public Safety, Peace Officer Standards and Training
R728-506
Canine Body Armor Restricted Account

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 44152
FILED: 10/28/2019

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Section 53-16-302, which provides that the Department of Public Safety shall make rules prescribing information that a law enforcement agency shall include with its application to obtain funds from the Canine Body Armor Restricted Account.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments were received during the previous five-year review period.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is authorized by Section 53-16-302, and is necessary in order to outline the manner in which a law enforcement agency may submit an application to receive funds from the Canine Body Armor Restricted Account, and the information to be included with the application. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
PUBLIC SAFETY
PEACE OFFICER STANDARDS AND TRAINING
410 W 9800 S
SANDY, UT 84070

or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Kim Gibb by phone at 801-556-8198, by FAX at 801-964-4482, or by Internet E-mail at kgibb@utah.gov
♦ Scott Stephenson by phone at 801-256-2322, by FAX at 801-256-0600, or by Internet E-mail at sstephen@utah.gov

AUTHORIZED BY: Scott Stephenson, Director

EFFECTIVE: 10/28/2019

End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF
RULE EFFECTIVE DATES

State law provides for agencies to make their administrative rules effective and enforceable after publication in the *Utah State Bulletin*. In the case of **Proposed Rules** or **Changes in Proposed Rules** with a designated comment period, the law permits an agency to make a rule effective no fewer than seven calendar days after the close of the public comment period, nor more than 120 days after the publication date. In the case of **Changes in Proposed Rules** with no designated comment period, the law permits an agency to make a rule effective on any date including or after the thirtieth day after the rule's publication date, but not more than 120 days after the publication date. If an agency fails to file a **Notice of Effective Date** within 120 days from the publication of a **Proposed Rule** or a related **Change in Proposed Rule** the rule lapses.

Agencies have notified the Office of Administrative Rules that the rules listed below have been made effective.

Notices of Effective Date are governed by Subsection 63G-3-301(12), Section 63G-3-303, and Sections R15-4-5a and R15-4-5b.

Abbreviations
AMD = Amendment
CPR = Change in Proposed Rule
NEW = New Rule
R&R = Repeal & Reenact
REP = Repeal

Administrative Services
Records Committee
No. 43767 (AMD): R35-1-2. Procedures for Appeal Hearings
Published: 07/01/2019
Effective: 10/18/2019

Commerce
Occupational and Professional Licensing
No. 44030 (AMD): R156-15A. State Construction Code Administration and Adoption of Approved State Construction Code Rule
Published: 09/15/2019
Effective: 10/22/2019

Governor
Economic Development
No. 44018 (NEW): R357-15a. Non-Profit Enterprise Zone Rule
Published: 09/15/2019
Effective: 10/28/2019

No. 43939 (AMD): R357-22. Rural Employment Expansion Program
Published: 08/15/2019
Effective: 10/28/2019

No. 43939 (CPR): R357-22. Rural Employment Expansion Program Rule
Published: 09/15/2019
Effective: 10/28/2019

Health
Disease Control and Prevention, Epidemiology
No. 43900 (AMD): R386-702. Communicable Disease Rule
Published: 08/15/2019
Effective: 11/01/2019

Family Health and Preparedness, Emergency Medical Services
No. 43979 (AMD): R426-5. Emergency Medical Services Training, Certification, and Licensing Standards
Published: 09/01/2019
Effective: 10/30/2019

Family Health and Preparedness, Licensing
No. 43964 (AMD): R432-45. Nurse Aide Training and Competency Evaluation Program
Published: 09/01/2019
Effective: 10/17/2019

Center for Health Data, Vital Records and Statistics
No. 43831 (REP): R436-55. Hemp Extraction Registration
Published: 07/15/2019
Effective: 10/29/2019

Human Services
Substance Abuse and Mental Health
No. 44005 (AMD): R523-4. Certification Requirements for Screening, Assessment, Prevention, Treatment and Recovery Support Programs for Adults
Published: 09/15/2019
Effective: 10/23/2019

No. 43980 (NEW): R523-20. Community Firearms Violence and Suicide Prevention Standards
Published: 09/01/2019
Effective: 10/23/2019

Natural Resources
Wildlife Resources
No. 44028 (AMD): R657-10. Taking Cougar
Published: 09/15/2019
Effective: 10/22/2019

Regents (Board of)
Administration
No. 43930 (NEW): R765-800. Free Expression on Campus
Published: 08/15/2019
Effective: 10/19/2019

No. 43933 (NEW): R765-801. Student Due Process
Published: 08/15/2019
Effective: 10/19/2019

No. 43935 (NEW): R765-802. Weapons on Campus
Published: 08/15/2019
Effective: 10/19/2019

No. 43947 (NEW): R765-803. Institutional Policy Review
Published: 08/15/2019
Effective: 10/19/2019

Salt Lake Community College
No. 43895 (NEW): R784-2. Free Expression on Campus
Published: 08/01/2019
Effective: 10/17/2019

No. 43896 (NEW): R784-3. Weapons on Campus
Published: 08/01/2019
Effective: 10/17/2019

No. 43897 (NEW): R784-4. Student Due Process
Published: 08/01/2019
Effective: 10/17/2019

Tax Commission
Motor Vehicle
No. 44009 (AMD): R873-22M-24. Salvage Vehicle Definitions Pursuant to Utah Code Ann. Sections 41-1a-1001 and 41-1a-1002
Published: 09/15/2019
Effective: 10/24/2019

No. 44010 (AMD): R873-22M-26. Interim Inspections and Repair Standards Pursuant to Utah Code Ann. Section 41-1a-1002
Published: 09/15/2019
Effective: 10/24/2019

Property Tax
No. 44012 (AMD): 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
Published: 09/15/2019
Effective: 10/24/2019

No. 44014 (AMD): R884-24P-33. 2019 Personal Property Valuation Guides and Schedules Pursuant to Utah Code Ann. Section 59-2-301
Published: 09/15/2019
Effective: 10/24/2019

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 November 01, 2019. The Rules Index is published in the Utah State Bulletin and in the annual Utah Administrative Rules Index of Changes. Nonsubstantive changes, while not published in the Bulletin, do become part of the Utah Administrative Code (Code) and are included in this Index, as well as 120-Day (Emergency) rules that do not become part of the Code. The rules are indexed by Agency (Code Number) and Keyword (Subject).

NOTE: Due to space constraints, the Keyword Index is not included in this Bulletin.

Questions regarding the index and the information it contains should be addressed to the Office of Administrative Rules (801-538-3003).

A copy of the **Rules Index** is available for public inspection at the Office of Administrative Rules (5110 State Office Building, Salt Lake City, UT), or may be viewed online at the Office's web site (https://rules.utah.gov/).

RULES INDEX - BY AGENCY (CODE NUMBER)

ABBREVIATIONS

AMD = Amendment (Proposed Rule)
CPR = Change in Proposed Rule
EMR = 120-Day (Emergency) Rule
EXD = Expired Rule
EXP = Expedited Rule
EXT = Five-Year Review Extension
GEX = Governor's Extension
LNR = Legislative Nonreauthorization
NEW = New Rule (Proposed Rule)
NSC = Nonsubstantive Rule Change
R&R = Repeal and Reenact (Proposed Rule)
REP = Repeal (Proposed Rule)
5YR = Five-Year Notice of Review and Statement of Continuation

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
ADMINISTRATIVE SERVICES					
Administration					
R13-2	Management of Records and Access to Records	43744	5YR	05/29/2019	2019-12/135
Child Welfare Parental Defense (Office of)					
R19-1	Parental Defense Counsel Training	43705	REP	07/08/2019	2019-11/4
Debt Collection					
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
Facilities Construction and Management					
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
Finance					
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
Purchasing and General Services					
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
Records Committee					
R35-1	State Records Committee Appeal Hearing Procedures	43760	5YR	06/03/2019	2019-13/111
R35-1-2	Procedures for Appeal Hearings	43767	AMD	10/18/2019	2019-13/15
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
Risk Management					
R37-4	Adjusted Utah Governmental Immunity Act Limitations on Judgments	43235	AMD	01/18/2019	2018-21/2
AGRICULTURE AND FOOD					
Animal Industry					
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
Conservation Commission					
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
Horse Racing Commission (Utah)					
R52-7	Horse Racing	43753	AMD	07/22/2019	2019-12/4

CAPITOL PRESERVATION BOARD (STATE)

Administration					
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	2019-21/61
Consumer Protection					
R152-32a	Pawnshop and Secondhand Merchandise Transaction Information Act Rule	43991	REP	10/09/2019	2019-17/2
R152-34a	Utah Postsecondary School State Authorization Act Rule	43612	5YR	04/01/2019	2019-8/101
R152-39	Child Protection Registry Rule	43845	REP	08/22/2019	2019-14/15
Occupational and Professional Licensing					
R156-15A	State Construction Code Administration and Adoption of Approved State Construction Code Rule	43522	AMD	04/08/2019	2019-5/8
R156-15A	State Construction Code Administration and Adoption of Approved State Construction Code Rule	44030	AMD	10/22/2019	2019-18/11
R156-17b	Pharmacy Practice Act Rule	44045	5YR	09/05/2019	2019-19/113
R156-20a (Changed to R156-20b)	Environmental Health Scientist Act Rule	43466	NSC	01/11/2019	Not Printed
R156-24b	Physical Therapy Practice Act Rule	43954	AMD	10/08/2019	2019-17/3
R156-28	Veterinary Practice Act Rule	43189	AMD	03/25/2019	2018-19/7
R156-28	Veterinary Practice Act Rule	43189	CPR	03/25/2019	2019-4/40
R156-31b	Nurse Practice Act Rule	43825	AMD	08/22/2019	2019-14/17
R156-31b-402	Administrative Penalties	43899	NSC	08/22/2019	Not Printed
R156-31c	Nurse Licensure Compact Rule	43822	5YR	06/17/2019	2019-14/77
R156-31c	Nurse Licensure Compact Rule	43953	REP	10/08/2019	2019-17/7
R156-38a	Residence Lien Restriction and Lien Recovery Fund Act Rule	44051	5YR	09/09/2019	2019-19/114
R156-38b	State Construction Registry Rule	44052	5YR	09/09/2019	2019-19/114
R156-50	Private Probation Provider Licensing Act Rule	43779	AMD	08/08/2019	2019-13/18
R156-55a	Utah Construction Trades Licensing Act Rule	43747	AMD	07/22/2019	2019-12/23
R156-55e	Elevator Mechanics Licensing Rule	43542	AMD	04/22/2019	2019-6/4
R156-60	Mental Health Professional Practice Act Rule	43543	5YR	02/26/2019	2019-6/41
R156-60a	Social Worker Licensing Act Rule	43799	5YR	06/13/2019	2019-13/114
R156-60b	Marriage and Family Therapist Licensing Act Rule	43800	5YR	06/13/2019	2019-13/115
R156-60c	Clinical Mental Health Counselor Licensing Act Rule	44044	5YR	09/05/2019	2019-19/115
R156-63a	Security Personnel Licensing Act Contract Security Rule	43318	AMD	05/13/2019	2018-22/89
R156-63a	Security Personnel Licensing Act Contract Security Rule	43318	CPR	05/13/2019	2019-7/48
R156-63a	Security Personnel Licensing Act Contract Security Rule	43577	NSC	05/14/2019	Not Printed
R156-63b	Security Personnel Licensing Act Armored Car Rule	43319	AMD	05/13/2019	2018-22/96
R156-63b	Security Personnel Licensing Act Armored Car Rule	43319	CPR	05/13/2019	2019-7/53
R156-63b	Security Personnel Licensing Act Armored Car Rule	43578	NSC	05/14/2019	Not Printed
R156-74	Certified Court Reporters Licensing Act Rule	43902	AMD	09/23/2019	2019-16/24
R156-78	Vocational Rehabilitation Counselors Licensing Act Rule	43890	5YR	07/15/2019	2019-15/46
R156-79	Hunting Guides and Outfitters Licensing Act Rule	43880	5YR	07/08/2019	2019-15/46
R156-80a	Medical Language Interpreter Act Rule	43465	5YR	01/02/2019	2019-2/19

R156-84	State Certification of Music Therapists Act Rule	44053	5YR	09/09/2019	2019-19/115
Real Estate					
R162-2f	Real Estate Licensing and Practices Rules	43407	AMD	01/23/2019	2018-24/8
R162-2f	Real Estate Licensing and Practices Rules	43643	AMD	06/19/2019	2019-9/10
CORRECTIONS					
Administration					
R251-105	Applicant Qualifications for Employment with Department of Corrections	43218	AMD	02/11/2019	2018-20/12
R251-111	Government Records Access and Management	43596	5YR	03/19/2019	2019-8/102
EDUCATION					
Administration					
R277-100	Definitions for Utah State Board of Education (Board) Rules	43479	AMD	03/13/2019	2019-3/2
R277-102	Adjudicative Proceedings	43609	REP	05/23/2019	2019-8/4
R277-105	Recognizing Constitutional Freedoms in the Schools	43610	REP	05/23/2019	2019-8/6
R277-115	LEA Supervision and Monitoring Requirements of Third Party Providers and Contracts	43619	NEW	05/23/2019	2019-8/10
R277-117	Utah State Board of Education Protected Documents	43511	REP	04/08/2019	2019-5/19
R277-119	Discretionary Funds	43618	REP	05/23/2019	2019-8/12
R277-122	Board of Education Procurement	43441	AMD	02/07/2019	2019-1/17
R277-301	Educator Licensing	43654	AMD	07/02/2019	2019-9/15
R277-303	Educator Preparation Programs	43657	AMD	07/02/2019	2019-9/20
R277-304	Teacher Preparation Programs	43624	NEW	05/23/2019	2019-8/13
R277-305	School Leadership License Areas of Concentration and Programs	43794	NEW	08/19/2019	2019-13/22
R277-308	New Educator Induction and Mentoring	43442	NEW	02/07/2019	2019-1/22
R277-318	Teacher Salary Supplement Program	43983	NEW	10/08/2019	2019-17/18
R277-322	LEA Codes of Conduct	43787	NEW	08/19/2019	2019-13/25
R277-400	School Facility Emergency and Safety	43507	5YR	02/08/2019	2019-5/95
R277-400	School Facility Emergency and Safety	43512	AMD	04/08/2019	2019-5/21
R277-402	School Readiness Initiative	43984	REP	10/08/2019	2019-17/20
R277-404	Requirements for Assessments of Student Achievement	43450	AMD	02/22/2019	2019-2/6
R277-406	Early Literacy Program and Benchmark Reading Assessment	43649	AMD	07/02/2019	2019-9/23
R277-407	School Fees	43532	AMD	04/08/2019	2019-5/25
R277-407	School Fees	43990	AMD	10/08/2019	2019-17/22
R277-417	Prohibiting LEAs and Third Party Providers from Offering Incentives or Disbursement for Enrollment or Participation	43658	AMD	07/02/2019	2019-9/26
R277-419	Pupil Accounting	43475	NSC	01/15/2019	Not Printed
R277-437	Student Enrollment Options	43397	AMD	01/09/2019	2018-23/6
R277-462	Comprehensive Counseling and Guidance Program	43739	5YR	05/23/2019	2019-12/135
R277-462	Comprehensive Counseling and Guidance Program	43728	R&R	07/31/2019	2019-12/39
R277-463	Class Size Average and Pupil-Teacher Ratio Reporting	43636	5YR	04/08/2019	2019-9/80
R277-463	Class Size Average and Pupil-Teacher Ratio Reporting	43652	AMD	07/02/2019	2019-9/29
R277-468	Parent/Guardian Review of Public Education Curriculum and Review of Complaint Process	44118	5YR	10/07/2019	2019-21/62
R277-470	Charter Schools - General Provisions	43374	REP	01/09/2019	2018-23/9
R277-471	School Construction Oversight, Inspections, Training and Reporting	43957	5YR	08/06/2019	2019-17/223
R277-472	Charter School Student Enrollment and Transfers and School District Capacity Information	43637	5YR	04/08/2019	2019-9/81
R277-474	School Instruction and Sex Education	43968	AMD	10/08/2019	2019-17/31
R277-475	Patriotic, Civic and Character Education	44057	5YR	09/11/2019	2019-19/116

R277-477	Distributions of Funds from the Trust Distribution Account and Administration of the School LAND Trust Program	43788	AMD	08/19/2019	2019-13/28
R277-480	Charter School Revolving Account	43712	5YR	05/13/2019	2019-11/41
R277-480	Charter School Revolving Account	43647	AMD	07/02/2019	2019-9/31
R277-481	Charter School Oversight, Monitoring and Appeals	43399	REP	01/09/2019	2018-23/12
R277-482	Charter School Timelines and Approval Processes	43392	REP	01/09/2019	2018-23/15
R277-483	LEA Reporting and Accounting Requirements	43515	NEW	04/08/2019	2019-5/36
R277-486	Professional Staff Cost Program	43508	5YR	02/08/2019	2019-5/95
R277-486	Professional Staff Cost Program	43516	AMD	04/08/2019	2019-5/39
R277-487	Public School Data Confidentiality and Disclosure	43476	AMD	03/13/2019	2019-3/4
R277-487	Public School Data Confidentiality and Disclosure	44055	5YR	09/09/2019	2019-19/117
R277-491	School Community Councils	43789	AMD	08/19/2019	2019-13/33
R277-493	Kindergarten Supplemental Enrichment Program	43638	5YR	04/08/2019	2019-9/81
R277-493	Kindergarten Supplemental Enrichment Program	43683	AMD	07/02/2019	2019-10/9
R277-494-4	Charter or Online School Student Participation in Co-Curricular Activities	43506	NSC	02/20/2019	Not Printed
R277-495	Required Policies for Electronic Devices in Public Schools	43531	AMD	04/08/2019	2019-5/42
R277-502	Educator Licensing and Data Retention	43664	NSC	05/14/2019	Not Printed
R277-502-4	License Levels, Procedures, and Periods of Validity	43600	NSC	04/01/2019	Not Printed
R277-503	Licensing Routes	43733	AMD	07/31/2019	2019-12/45
R277-504	Early Childhood, Elementary, Secondary, Special Education (K-12), and Preschool Special Education (Birth-Age 5) Licensure	43958	5YR	08/06/2019	2019-17/223
R277-504	Early Childhood, Elementary, Secondary, Special Education (K-12), and Preschool Special Education (Birth-Age 5) Licensure	43985	AMD	10/08/2019	2019-17/34
R277-509	Licensure of Student Teachers and Interns	43373	AMD	01/09/2019	2018-23/19
R277-511	Academic Pathway to Teaching (APT) Level 1 License	43648	AMD	07/02/2019	2019-9/34
R277-517	LEA Codes of Conduct	43790	REP	08/19/2019	2019-13/36
R277-522	Entry Years Enhancements (EYE) for Quality Teaching - Level 1 Utah Teachers	43791	AMD	08/19/2019	2019-13/38
R277-523	Teacher Salary Supplement Program	43986	REP	10/08/2019	2019-17/40
R277-524	Paraprofessional/Paraeducator Programs, Assignments, and Qualifications	43583	5YR	03/14/2019	2019-7/61
R277-528	Use of Public Education Job Enhancement Program (PEJEP) Funds	43509	5YR	02/08/2019	2019-5/96
R277-528	Use of Public Education Job Enhancement Program (PEJEP) Funds	43701	AMD	08/19/2019	2019-11/6
R277-550	Charter Schools – Definitions	43400	NEW	01/09/2019	2018-23/21
R277-551	Charter Schools - General Provisions	43393	NEW	01/09/2019	2018-23/24
R277-551	Charter Schools - General Provisions	43478	AMD	03/13/2019	2019-3/10
R277-552	Charter School Timelines and Approval Processes	43394	NEW	01/09/2019	2018-23/26
R277-552	Charter School Timelines and Approval Processes	43623	AMD	05/23/2019	2019-8/19
R277-553	Charter School Oversight, Monitoring and Appeals	43401	NEW	01/09/2019	2018-23/31
R277-554	State Charter School Board Grants and Mentoring Program	43395	NEW	01/09/2019	2018-23/34
R277-555	Corrective Action Against Charter School Authorizers	43396	NEW	01/09/2019	2018-23/38
R277-600	Student Transportation Standards and Procedures	43375	AMD	01/09/2019	2018-23/38
R277-600	Student Transportation Standards and Procedures	43795	AMD	08/19/2019	2019-13/41
R277-601	Standards for Utah School Buses and Operations	43611	5YR	03/29/2019	2019-8/102

R277-604	Private School, Home School, and Bureau of Indian Affairs (BIA) Student Participation in Public School Achievement Tests	43732	AMD	07/31/2019	2019-12/50
R277-607	Truancy Prevention	43959	5YR	08/06/2019	2019-17/224
R277-607	Truancy Prevention	43967	AMD	10/08/2019	2019-17/42
R277-622	School-based Mental Health Qualified Grant Program	43729	NEW	07/31/2019	2019-12/53
R277-700	The Elementary and Secondary School General Core	43621	AMD	05/23/2019	2019-8/23
R277-704	Financial and Economic Literacy: Integration into Core Curriculum and Financial and Economic Literacy Student Passports	43519	AMD	04/08/2019	2019-5/46
R277-704	Financial and Economic Literacy: Integration into Core Curriculum and Financial and Economic Literacy Student Passports	43969	AMD	10/08/2019	2019-17/44
R277-706	Public Education Regional Service Centers	43960	5YR	08/06/2019	2019-17/225
R277-706	Public Education Regional Service Centers	43982	AMD	10/08/2019	2019-17/47
R277-707	Enhancement for Accelerated Students Program	43651	AMD	07/02/2019	2019-9/37
R277-707	Enhancement for Accelerated Students Program	43813	AMD	08/19/2019	2019-13/47
R277-709	Education Programs Serving Youth in Custody	43702	AMD	08/19/2019	2019-11/9
R277-710	Intergenerational Poverty Interventions in Public Schools	43824	5YR	06/21/2019	2019-14/77
R277-710	Intergenerational Poverty Interventions in Public Schools	43793	AMD	08/19/2019	2019-13/51
R277-711	High Quality School Readiness Expansion	43987	REP	10/08/2019	2019-17/49
R277-713	Concurrent Enrollment of High School Students in College Courses	43988	AMD	10/08/2019	2019-17/51
R277-714	Dissemination of Information About Juvenile Offenders	43703	REP	07/31/2019	2019-11/13
R277-716	Alternative Language Services for Utah Students	43731	AMD	07/31/2019	2019-12/56
R277-720	Reimbursement Program for Early Graduation from Competency-Based Education	43622	NEW	05/23/2019	2019-8/30
R277-724	Criteria for Sponsors Recruiting Day Care Facilities in the Child and Adult Care Food Program	43579	5YR	03/13/2019	2019-7/61
R277-726	Statewide Online Education Program	43620	AMD	05/23/2019	2019-8/32
R277-910	Underage Drinking Prevention Program	43448	NEW	02/07/2019	2019-1/24
R277-912	Law Enforcement Related Incident Reporting	43439	NEW	02/07/2019	2019-1/26
R277-922	Digital Teaching and Learning Grant Program	43398	AMD	01/09/2019	2018-23/45
R277-922	Digital Teaching and Learning Grant Program	43713	NSC	05/24/2019	Not Printed
R277-926	Certification of Residential Treatment Center Special Education Program	43655	NEW	07/02/2019	2019-9/40
R277-927	Teacher and Student Success Act (TSSA) Program	43950	NEW	10/08/2019	2019-16/27
R277-928	High-Need Schools Grant	43989	NEW	10/08/2019	2019-17/55

ENVIRONMENTAL QUALITY

Air Quality

R307-101-2	Definitions	43372	AMD	02/07/2019	2018-23/49
R307-110-10	Section IX, Control Measures for Area and Point Sources, Part A, Fine Particulate Matter	43212	AMD	03/05/2019	2018-19/31
R307-110-10	Section IX, Control Measures for Area and Point Sources, Part A, Fine Particulate Matter	43212	CPR	03/05/2019	2019-3/40
R307-110-17	Section IX, Control Measures for Area and Point Sources, Part H, Emission Limits	42976	AMD	01/03/2019	2018-13/35
R307-110-17	Section IX, Control Measures for Area and Point Sources, Part H, Emission Limits	42976	CPR	01/03/2019	2018-21/134
R307-110-28	Regional Haze	43587	AMD	08/15/2019	2019-7/4
R307-110-28	Regional Haze	43587	CPR	08/15/2019	2019-14/73
R307-110-31	Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements and Applicability	43806	AMD	09/05/2019	2019-13/54

R307-110-36	Section X, Vehicle Inspection and Maintenance Program, Part F, Cache County	43807	AMD	09/05/2019	2019-13/55
R307-125	Clean Air Retrofit, Replacement, and Off-Road Technology Program	44037	5YR	09/05/2019	2019-19/117
R307-150-3	Applicability	43588	AMD	06/25/2019	2019-7/5
R307-204	Emission Standards: Smoke Management	43808	AMD	09/05/2019	2019-13/56
R307-204	Emission Standards: Smoke Standards	44050	NSC	09/20/2019	Not Printed
R307-401-10	Source Category Exemptions	43589	AMD	06/06/2019	2019-7/6
R307-501	Oil and Gas Industry: General Provisions	44038	5YR	09/05/2019	2019-19/118
R307-502	Oil and Gas Industry: Pneumatic Controllers	44039	5YR	09/05/2019	2019-19/118
R307-503	Oil and Gas Industry: Flares	44040	5YR	09/05/2019	2019-19/119
R307-504	Oil and Gas Industry: Tank Trunk Loading	44041	5YR	09/05/2019	2019-19/120
R307-511	Oil and Gas Industry: Associated Gas Flaring	43211	NEW	03/05/2019	2018-19/32
R307-511	Oil and Gas Industry: Associated Gas Flaring	43211	CPR	03/05/2019	2019-3/41
Drinking Water					
R309-100-9	Variances	43378	AMD	01/15/2019	2018-23/57
R309-105-4	General	43379	AMD	01/15/2019	2018-23/58
R309-110-4	Definitions	43380	AMD	01/15/2019	2018-23/60
R309-200	Monitoring and Water Quality: Drinking Water Standards	43381	AMD	01/15/2019	2018-23/73
R309-210-8	Disinfection Byproducts - Stage 1 Requirements	43382	AMD	01/15/2019	2018-23/80
R309-211	Monitoring and Water Quality: Distribution System -- Total Coliform Requirements	43383	AMD	01/15/2019	2018-23/85
R309-215-10	Residual Disinfectant	43384	AMD	01/15/2019	2018-23/91
R309-215-16	Groundwater Rule	43385	AMD	01/15/2019	2018-23/93
R309-220-4	General Public Notification Requirements	43386	AMD	01/15/2019	2018-23/99
R309-225-4	General Requirements	43387	AMD	01/15/2019	2018-23/101
Waste Management and Radiation Control, Radiation					
R313-19-34	Terms and Conditions of Licenses	43810	AMD	08/09/2019	2019-13/62
R313-22-75	Special Requirements for a Specific License to Manufacture, Assemble, Repair, or Distribute Commodities, Products, or Devices Which Contain Radioactive Material	43809	AMD	08/09/2019	2019-13/65
R313-28-31	General and Administrative Requirements	43253	AMD	01/14/2019	2018-21/52
R313-28-31	General and Administrative Requirements	43530	AMD	04/15/2019	2019-5/50
R313-32	Medical Use of Radioactive Material	43812	AMD	08/09/2019	2019-13/74
Waste Management and Radiation Control, Waste Management					
R315-15-14	DIYer Reimbursement	43529	AMD	04/15/2019	2019-5/54
R315-15-16	Grants	43768	NSC	06/12/2019	Not Printed
R315-260	Hazardous Waste Management System	43526	AMD	04/15/2019	2019-5/56
R315-260	Hazardous Waste Management System	43971	AMD	10/15/2019	2019-17/70
R315-261	General Requirements –– Identification and Listing of Hazardous Waste	43527	AMD	04/15/2019	2019-5/67
R315-261	General Requirements –– Identification and Listing of Hazardous Waste	43972	AMD	10/15/2019	2019-17/81
R315-262	Hazardous Waste Generator Requirements	43528	AMD	04/15/2019	2019-5/83
R315-262	Hazardous Waste Generator Requirements	43973	AMD	10/15/2019	2019-17/102
R315-263	Standards Applicable to Transporters of Hazardous Waste and Standards Applicable to Emergency Control of Spills for All Hazardous Waste Handlers	43974	AMD	10/15/2019	2019-17/128
R315-264	Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities	43975	AMD	10/15/2019	2019-17/133
R315-265	Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities	43976	AMD	10/15/2019	2019-17/137
R315-266	Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities	43977	AMD	10/15/2019	2019-17/189
R315-268-50	Land Disposal Restrictions -- Prohibitions on Storage of Restricted Wastes	44007	NSC	08/30/2019	Not Printed

R315-270-13	Hazardous Waste Permit Program -- Contents of Part a of the Permit Application	44008	NSC	08/30/2019	Not Printed
R315-273	Standards for Universal Waste Management	43252	AMD	01/14/2019	2018-21/55
R315-273	Standards for Universal Waste Management	43978	AMD	10/15/2019	2019-17/192
Water Quality					
R317-1-1	Definitions	43585	AMD	07/01/2019	2019-7/8
R317-2	Standards of Quality for Waters of the State	43586	AMD	07/01/2019	2019-7/11
R317-2-14	Numeric Criteria	43848	NSC	07/01/2019	Not Printed
R317-401	Graywater Systems	43633	5YR	04/08/2019	2019-9/82
GOVERNOR					
Economic Development					
R357-7	Utah Capital Investment Board	43488	EXT	01/24/2019	2019-4/47
R357-7	Utah Capital Investment Board	43734	5YR	05/22/2019	2019-12/136
R357-8	Allocation of Private Activity Bond Volume Cap	43755	REP	07/26/2019	2019-12/63
R357-15	Enterprise Zone Tax Credit	43814	AMD	08/12/2019	2019-13/80
R357-15-2	Definitions	43946	NSC	08/13/2019	Not Printed
R357-15a	Non-Profit Enterprise Zone Rule	44018	NEW	10/28/2019	2019-18/49
R357-22	Rural Employment Expansion Program	43939	AMD	10/28/2019	2019-16/30
R357-22	Rural Employment Expansion Program Rule	43939	CPR	10/28/2019	2019-18/86
R357-24	Utah Works Program Rule	43720	NEW	07/08/2019	2019-11/15
R357-24	Utah Works Program Rule	43992	AMD	10/15/2019	2019-17/195
R357-25	Rural Coworking and Innovation Center Grant Program Rule	43948	NEW	09/23/2019	2019-16/32
R357-26	Rural Rapid Manufacturing Grant Program Rule	43949	NEW	09/23/2019	2019-16/35
Energy Development (Office of)					
R362-4	High Cost Infrastructure Development Tax Credit Act	43223	AMD	02/05/2019	2018-20/18
R362-5	Commercial Property Assessed Clean Energy (C-PACE) Administrative Rules	43419	NEW	01/23/2019	2018-24/15
HEALTH					
Administration					
R380-25	Submission of Data Through an Electronic Data Interchange	43774	5YR	06/07/2019	2019-13/116
R380-70	Standards for Electronic Exchange of Clinical Health Information	43487	5YR	01/24/2019	2019-4/43
Center for Health Data, Health Care Statistics					
R428-1	Health Data Plan and Incorporated Documents	43544	AMD	05/01/2019	2019-6/12
R428-2-10	Exemptions and Extensions	43852	AMD	09/19/2019	2019-15/10
R428-15	Health Data Authority Health Insurance Claims Reporting	44103	5YR	09/25/2019	2019-20/143
Center for Health Data, Vital Records and Statistics					
R436-19	Abortion Reporting	43462	NEW	05/08/2019	2019-2/10
R436-55	Hemp Extraction Registration	43831	REP	10/29/2019	2019-14/38
Disease Control and Prevention, Environmental Services					
R392-104	Feeding Disadvantaged Groups	43995	5YR	08/20/2019	2019-18/91
R392-110	Food Service Sanitation in Residential Care Facilities	43660	R&R	07/16/2019	2019-10/12
R392-303	Public Geothermal Pools and Bathing Places	43502	5YR	02/05/2019	2019-5/96
Disease Control and Prevention, Epidemiology					
R386-80	Local Public Health Emergency Funding Protocols	44006	5YR	08/22/2019	2019-18/90
R386-702	Communicable Disease Rule	43900	AMD	11/01/2019	2019-16/37
R386-900	Special Measures for the Operation of Syringe Exchange Programs	43468	AMD	05/15/2019	2019-3/16

Disease Control and Prevention, Health Promotion					
R384-100	Cancer Reporting Rule	43540	5YR	02/25/2019	2019-6/41
R384-200	Cancer Control Program	43539	5YR	02/25/2019	2019-6/42
R384-201	School-Based Vision Screening for Students in Public Schools	43757	AMD	08/01/2019	2019-12/66
R384-203	Prescription Drug Database Access	43537	5YR	02/25/2019	2019-6/42
R384-203	Prescription Drug Database Access	43562	AMD	07/23/2019	2019-7/25
R384-418	Electronic-Cigarette Mandatory Warning Signage and Sale Restrictions	44113	EMR	10/01/2019	2019-20/136
Disease Control and Prevention, Immunization					
R396-100	Immunization Rule for Students	44062	EMR	09/13/2019	2019-19/109
Disease Control and Prevention, Medical Examiner					
R448-10	Unattended Death and Reporting Requirements	43631	5YR	04/05/2019	2019-9/83
R448-20	Access to Medical Examiner Reports	43632	5YR	04/05/2019	2019-9/84
Family Health and Preparedness, Child Care Licensing					
R430-8	Exemptions From Child Care Licensing	43661	5YR	04/17/2019	2019-10/116
Family Health and Preparedness, Children with Special Health Care Needs					
R398-5	Birth Defects Reporting	43472	AMD	03/11/2019	2019-3/18
R398-5	Birth Defects and Critical Congenital Heart Disease Reporting	43886	5YR	07/12/2019	2019-15/47
R398-10	Autism Spectrum Disorders and Intellectual Disability Reporting	43538	5YR	02/25/2019	2019-6/43
Family Health and Preparedness, Emergency Medical Services					
R426-1	General Definitions	43177	AMD	01/11/2019	2018-18/15
R426-2	Emergency Medical Services Provider Designations for Pre-Hospital Providers, Critical Incident Stress Management and Quality Assurance Reviews	43178	AMD	01/11/2019	2018-18/19
R426-2	Emergency Medical Services Provider Designations for Pre-Hospital Providers, Critical Incident Stress Management and Quality Assurance Reviews	43881	AMD	09/11/2019	2019-15/2
R426-2-400	Emergency Medical Service Dispatch Center Minimum Designation Requirements	43260	NSC	01/11/2019	Not Printed
R426-4	Operations	43882	AMD	09/11/2019	2019-15/6
R426-5	Emergency Medical Services Training, Certification, and Licensing Standards	43979	AMD	10/30/2019	2019-17/204
R426-8	Emergency Medical Services Ground Ambulance Rates and Charges	43608	AMD	07/01/2019	2019-8/39
R426-9	Trauma and EMS System Facility Designations	43321	AMD	01/18/2019	2018-22/114
Family Health and Preparedness, Licensing					
R432-7	Specialty Hospital - Psychiatric Hospital Construction	43553	5YR	02/27/2019	2019-6/43
R432-8	Specialty Hospital – Chemical Dependency/Substance Abuse Construction	43559	5YR	02/28/2019	2019-6/44
R432-9	Specialty Hospital – Rehabilitation Construction Rule	43560	5YR	02/28/2019	2019-6/44
R432-10	Specialty Hospital – Long-Term Acute Care Construction Rule	43563	5YR	03/04/2019	2019-7/62
R432-11	Orthopedic Hospital Construction	43564	5YR	03/04/2019	2019-7/62
R432-12	Small Health Care Facility (Four to Sixteen Beds) Construction Rule	43565	5YR	03/04/2019	2019-7/63
R432-13	Freestanding Ambulatory Surgical Center Construction Rule	43598	5YR	03/21/2019	2019-8/103
R432-14	Birthing Center Construction Rule	43599	5YR	03/21/2019	2019-8/103
R432-30	Adjudicative Procedure	43597	5YR	03/21/2019	2019-8/104
R432-32	Licensing Exemption for Non-Profit Volunteer End-of-Life Care	43614	5YR	04/01/2019	2019-8/104
R432-45	Nurse Aide Training and Competency Evaluation Program	43630	5YR	04/05/2019	2019-9/83

R432-45	Nurse Aide Training and Competency Evaluation Program	43964	AMD	10/17/2019	2019-17/216
R432-270	Assisted Living Facilities	43533	5YR	02/20/2019	2019-6/45
R432-270-8	Personnel	43773	AMD	08/20/2019	2019-13/89
Family Health and Preparedness, Maternal and Child Health					
R433-200	Family Planning Access Act	43402	NEW	03/06/2019	2018-24/18
Family Health and Preparedness, Primary Care and Rural Health					
R434-40	Utah Health Care Workforce Financial Assistance Program Rules	43709	5YR	05/08/2019	2019-11/41
Health Care Financing, Coverage and Reimbursement Policy					
R414-2A	Inpatient Hospital Services	43834	AMD	09/17/2019	2019-14/25
R414-2B	Inpatient Intensive Physical Rehabilitation Services	43835	REP	09/17/2019	2019-14/30
R414-7A	Medicaid Certification of New Nursing Facilities	43635	NSC	04/24/2019	Not Printed
R414-7A	Medicaid Certification of New Nursing Facilities	43740	5YR	05/24/2019	2019-12/137
R414-14A	Hospice Care	43634	5YR	04/08/2019	2019-9/82
R414-23	Provider Enrollment	43832	NEW	09/17/2019	2019-14/31
R414-31	Inpatient Psychiatric Services for Individuals Under Age 21	43751	5YR	05/31/2019	2019-12/137
R414-36	Rehabilitative Mental Health and Substance Use Disorder Services	43771	5YR	06/05/2019	2019-13/116
R414-49	Dental, Oral and Maxillofacial Surgeons and Orthodontia	43536	AMD	04/22/2019	2019-6/7
R414-49	Dental, Oral and Maxillofacial Surgeons and Orthodontia	43749	5YR	05/31/2019	2019-12/138
R414-61	Home and Community-Based Services Waivers	43851	5YR	07/02/2019	2019-15/47
R414-61-2	Incorporation by Reference	43425	AMD	02/15/2019	2019-1/28
R414-71	Early and Periodic Screening, Diagnostic and Treatment Program	43837	NEW	08/29/2019	2019-14/33
R414-140	Choice of Health Care Delivery Program	43772	5YR	06/05/2019	2019-13/117
R414-200	Non-Traditional Medicaid Health Plan Services	43955	AMD	10/10/2019	2019-17/199
R414-303	Coverage Groups	43706	EMR	05/07/2019	2019-11/25
R414-303	Coverage Groups	43796	AMD	08/29/2019	2019-13/83
R414-311-6	Household Composition and Income Provisions	43707	EMR	05/07/2019	2019-11/27
R414-311-6	Household Composition and Income Provisions	43797	AMD	08/29/2019	2019-13/86
R414-312	Adult Expansion Medicaid	43708	EMR	05/07/2019	2019-11/28
R414-312	Adult Expansion Medicaid	43798	NEW	08/29/2019	2019-13/87
R414-401	Nursing Care Facility Assessment	43687	AMD	07/01/2019	2019-10/16
R414-501	Preadmission Authorization, Retroactive Authorization, and Continued Stay Review	43770	5YR	06/05/2019	2019-13/117
R414-502	Nursing Facility Levels of Care	43750	5YR	05/31/2019	2019-12/138
R414-503	Preadmission Screening and Resident Review	43748	5YR	05/31/2019	2019-12/139
R414-510	Intermediate Care Facility for Persons with Intellectual Disabilities Transition Program	43688	AMD	07/15/2019	2019-10/19
R414-515	Long Term Acute Care	43473	AMD	03/21/2019	2019-3/21
R414-516	Nursing Facility Non-State Government-Owned Upper Payment Limit Quality Improvement Program	43483	AMD	03/21/2019	2019-3/23
R414-516	Nursing Facility Non-State Government-Owned Upper Payment Limit Quality Improvement Program	43830	AMD	08/29/2019	2019-14/35
R414-520	Admission Criteria for Medically Complex Children's Waiver	43332	NEW	01/04/2019	2018-22/111
R414-521	Accountable Care Organization Hospital Report	43352	NEW	01/04/2019	2018-22/113
R414-522	Electronic Visit Verification Requirements for Personal Care and Home Health Care Services	43689	NEW	07/01/2019	2019-10/23
HERITAGE AND ARTS					
History					
R455-11	Historic Preservation Tax Credit	43716	5YR	05/14/2019	2019-11/42
R455-11	Historic Preservation Tax Credit	43721	NSC	05/24/2019	Not Printed

R455-13	Capital Funds Request Prioritization	43717	REP	09/20/2019	2019-11/19
R455-14	Procedures for Electronic Meetings	43714	5YR	05/14/2019	2019-11/43
R455-15	Procedures for Emergency Meetings	43715	5YR	05/14/2019	2019-11/43
HUMAN RESOURCE MANAGEMENT					
Administration					
R477-1	Definitions	43670	AMD	07/01/2019	2019-10/25
R477-4	Filling Positions	43671	AMD	07/01/2019	2019-10/30
R477-5	Employee Status and Probation	43672	AMD	07/01/2019	2019-10/34
R477-6	Compensation	43673	AMD	07/01/2019	2019-10/36
R477-7	Leave	43674	AMD	07/01/2019	2019-10/41
R477-8	Working Conditions	43675	AMD	07/01/2019	2019-10/49
R477-9	Employee Conduct	43676	AMD	07/01/2019	2019-10/54
R477-11	Discipline	43677	AMD	07/01/2019	2019-10/58
R477-12	Separations	43678	AMD	07/01/2019	2019-10/60
R477-13	Volunteer Programs	43679	AMD	07/01/2019	2019-10/62
R477-14	Substance Abuse and Drug-Free Workplace	43669	AMD	07/01/2019	2019-10/64
R477-15	Workplace Harassment Prevention	43680	AMD	07/01/2019	2019-10/67
R477-101	Administrative Law Judge Conduct Committee	43470	5YR	01/07/2019	2019-3/44
HUMAN SERVICES					
Administration					
R495-882	Termination of Parental Rights	43496	5YR	02/01/2019	2019-4/43
R495-885	Employee Background Screenings	43719	EMR	05/14/2019	2019-11/30
R495-885	Employee Background Screenings	43690	AMD	07/18/2019	2019-10/69
Administration, Administrative Services, Licensing					
R501-1	General Provisions for Licensing	43330	AMD	01/17/2019	2018-22/119
R501-7	Child Placing Adoption Agencies	43356	AMD	02/12/2019	2018-23/105
R501-8	Outdoor Youth Programs	43234	AMD	01/17/2019	2018-21/89
R501-14	Human Service Program Background Screening	43718	EMR	05/14/2019	2019-11/33
R501-14	Human Service Program Background Screening	43691	AMD	07/18/2019	2019-10/73
R501-21	Outpatient Treatment Programs	43237	AMD	02/12/2019	2018-21/91
Child and Family Services					
R512-43	Adoption Assistance	43518	AMD	04/08/2019	2019-5/85
R512-305	Out-of-Home Services, Transition to Adult Living Services	43358	AMD	01/09/2019	2018-23/115
R512-310	Reasonable and Prudent Parent Standard	43981	5YR	08/12/2019	2019-17/225
Juvenile Justice Services					
R547-15	Formula for Reform Savings	43804	EMR	06/13/2019	2019-13/109
R547-15	Formula for Reform Savings	43805	NEW	09/23/2019	2019-13/91
Recovery Services					
R527-10	Disclosure of Information to the Office of Recovery Services	43700	5YR	05/03/2019	2019-11/44
R527-38	Unenforceable Cases	43593	AMD	07/18/2019	2019-8/46
R527-40	Retained Support	44019	5YR	08/28/2019	2019-18/91
R527-332	Unreimbursed Assistance Calculation	43699	5YR	05/03/2019	2019-11/44
R527-394	Posting Bond or Security	43682	5YR	04/29/2019	2019-10/116
R527-450	Federal Tax Refund Intercept	43727	5YR	05/20/2019	2019-12/139
Services for People with Disabilities					
R539-2	Service Coordination	43891	5YR	07/15/2019	2019-15/48
R539-3	Rights and Protections	43892	5YR	07/15/2019	2019-15/48
R539-4	Behavior Interventions	43893	5YR	07/15/2019	2019-15/49
R539-5	Self-Administered Services	43894	5YR	07/15/2019	2019-15/50
Substance Abuse and Mental Health					
R523-2-9	Distribution of Fee-On-Fine (DUI) Funds	43505	AMD	04/17/2019	2019-5/92

R523-4	Certification Requirements for Screening, Assessment, Prevention, Treatment and Recovery Support Programs for Adults	44005	AMD	10/23/2019	2019-18/53
R523-5	Peer Support Specialist Training and Certification	43141	AMD	01/29/2019	2018-17/60
R523-5	Peer Support Specialist Training and Certification	43141	CPR	01/29/2019	2018-24/38
R523-7	Certification of Designated Examiners and Case Managers	43850	AMD	08/21/2019	2019-14/41
R523-12-4	Provider Responsibilities	43575	AMD	06/27/2019	2019-7/27
R523-13-4	Provider Responsibilities	43576	AMD	06/27/2019	2019-7/29
R523-17	Behavioral Health Crisis Response Systems Standards	43555	AMD	04/22/2019	2019-6/14
R523-18	Mobile Crisis Outreach Teams Certification Standards	43554	AMD	04/22/2019	2019-6/21
R523-19	Community Mental Health Crisis and Suicide Prevention Training Grant Standards	43355	NEW	01/29/2019	2018-23/118
R523-20	Community Firearms Violence and Suicide Prevention Standards	43980	NEW	10/23/2019	2019-17/220

INSURANCE

Administration

R590-67	Proxy Solicitations and Consent and Authorization of Stockholders of Domestic Stock Insurers	44003	5YR	08/20/2019	2019-18/92
R590-76	Health Maintenance Organizations and Limited Health Plans	44004	5YR	08/20/2019	2019-18/93
R590-79	Life Insurance Disclosure Rule	43996	5YR	08/20/2019	2019-18/93
R590-83	Unfair Discrimination on the Basis of Sex or Marital Status	43997	5YR	08/20/2019	2019-18/94
R590-93	Replacement of Life Insurance and Annuities	43627	5YR	04/03/2019	2019-9/84
R590-98	Unfair Practice in Payment of Life Insurance and Annuity Policy Values	43628	5YR	04/03/2019	2019-9/85
R590-102	Insurance Department Fee Payment Rule	43604	NSC	04/01/2019	Not Printed
R590-102-21	Dedicated Fees	43485	AMD	03/26/2019	2019-4/4
R590-126-2	Purpose and Scope	43428	AMD	05/01/2019	2019-1/30
R590-127	Rate Filing Exemptions	43998	5YR	08/20/2019	2019-18/94
R590-129	Unfair Discrimination Based Solely Upon Blindness or Physical or Mental Impairment	43999	5YR	08/20/2019	2019-18/95
R590-146	Medicare Supplement Insurance Standards	43659	AMD	06/07/2019	2019-9/44
R590-146-15	Filing of Policies, Certificates, and Premium Rates	43921	NSC	07/30/2019	Not Printed
R590-155	Utah Life and Health Insurance Guaranty Association Summary Document	43486	AMD	06/07/2019	2019-4/5
R590-155	Utah Life and Health Insurance Guaranty Association Summary Document	43486	CPR	06/07/2019	2019-9/72
R590-166	Home Protection Service Contract Rule	43626	5YR	04/03/2019	2019-9/85
R590-167	Individual, Small Employer, and Group Health Benefit Plan Rule	44000	5YR	08/20/2019	2019-18/95
R590-170	Fiduciary and Trust Account Obligations	43514	5YR	02/11/2019	2019-5/97
R590-171	Surplus Lines Procedures Rule	43737	5YR	05/23/2019	2019-12/140
R590-186	Bail Bond Surety Business	43694	AMD	06/21/2019	2019-10/79
R590-186-5	Company License Renewal	43429	AMD	02/07/2019	2019-1/31
R590-190	Unfair Property, Liability and Title Claims Settlement Practices Rule	43625	5YR	04/03/2019	2019-9/86
R590-191	Unfair Life Insurance Claims Settlement Practices Rule	43629	5YR	04/03/2019	2019-9/86
R590-192	Unfair Accident and Health Claims Settlement Practices	43785	5YR	06/10/2019	2019-13/118
R590-194	Coverage of Dietary Products for Inborn Errors of Amino Acid or Urea Cycle Metabolism	44001	5YR	08/20/2019	2019-18/96
R590-218	Permitted Language for Reservation of Discretion Clauses	43653	REP	06/07/2019	2019-9/67
R590-220	Submission of Accident and Health Insurance Filings	43520	5YR	02/13/2019	2019-5/98

R590-225	Submission of Property and Casualty Rate and Form Filings	43521	5YR	02/13/2019	2019-5/98
R590-225-3	Documents Incorporated by Reference	43615	AMD	05/22/2019	2019-8/47
R590-226	Submission of Life Insurance Filings	43580	5YR	03/14/2019	2019-7/63
R590-227	Submission of Annuity Filings	43581	5YR	03/14/2019	2019-7/64
R590-228	Submission of Credit Life and Credit Accident and Health Insurance Form and Rate Filings	43582	5YR	03/14/2019	2019-7/64
R590-229	Annuity Disclosure	44002	5YR	08/20/2019	2019-18/97
R590-230	Suitability in Annuity Transactions	43738	5YR	05/23/2019	2019-12/140
R590-238-4	Annual Reporting Requirements	43693	AMD	06/21/2019	2019-10/84
R590-244	Individual and Agency Licensing Requirements	43786	5YR	06/10/2019	2019-13/119
R590-252	Use of Senior-Specific Certifications and Professional Designations	43513	5YR	02/11/2019	2019-5/99
R590-254	Annual Financial Reporting Rule	43826	5YR	06/26/2019	2019-14/78
R590-268	Small Employer Stop-Loss Insurance	43570	5YR	03/07/2019	2019-7/65
R590-268	Small Employer Stop-Loss Insurance	43692	AMD	06/21/2019	2019-10/85
R590-269	Individual Open Enrollment Period	43474	5YR	01/11/2019	2019-3/44
R590-270	Risk Adjustment Data Submission Requirements	44090	5YR	09/20/2019	2019-20/144
R590-277	Managed Care Health Benefit Plan Policy Standards	43427	NEW	08/20/2019	2019-1/33
R590-277	Managed Care Health Benefit Plan Policy Standards	43427	CPR	08/20/2019	2019-9/73
R590-278	Consent Requests Under 18 USC 1033(e)(2)	43695	AMD	06/21/2019	2019-10/88
R590-280	Counting Short-Term Funds	43561	NEW	04/23/2019	2019-6/25
R590-281	License Applications Submitted by Individuals Who Have a Criminal Conviction	43696	NEW	06/21/2019	2019-10/90
Title and Escrow Commission					
R592-6	Unfair Inducements and Marketing Practices in Obtaining Title Insurance Business	43781	5YR	06/10/2019	2019-13/119
R592-7	Title Insurance Continuing Education	43782	5YR	06/10/2019	2019-13/120
R592-8	Application Process for an Attorney Exemption for Agency Title Insurance Producer Licensing	43783	5YR	06/10/2019	2019-13/121
R592-9	Title Insurance Recovery, Education, and Research Fund Assessment Rule	43784	5YR	06/10/2019	2019-13/121
JUDICIAL PERFORMANCE EVALUATION COMMISSION					
Administration					
R597-1	General Provisions	43501	5YR	02/05/2019	2019-5/100
R597-1	General Provisions	43917	R&R	09/23/2019	2019-16/55
R597-2	Administration of the Commission	43918	R&R	09/23/2019	2019-16/56
R597-3	Judicial Performance Evaluations	43500	5YR	02/05/2019	2019-5/100
R597-3	Judicial Performance Evaluations	43919	R&R	09/23/2019	2019-16/59
R597-4	Justice Courts	43601	5YR	03/22/2019	2019-8/105
R597-4	Justice Courts	43920	R&R	09/23/2019	2019-16/66
LABOR COMMISSION					
Adjudication					
R602-2-1	Pleadings and Discovery	43574	AMD	05/08/2019	2019-7/30
Boiler, Elevator and Coal Mine Safety					
R616-2-3	Safety Codes and Rules for Boilers and Pressure Vessels	43572	AMD	05/08/2019	2019-7/35
R616-2-3	Safety Codes and Rules for Boilers and Pressure Vessels	43710	EMR	05/09/2019	2019-11/39
R616-2-3	Safety Codes and Rules for Boilers and Pressure Vessels	43711	AMD	07/08/2019	2019-11/21
R616-2-8	Inspection of Boilers and Pressure Vessels	43573	AMD	05/08/2019	2019-7/36
R616-4	Coal Mine Safety	44086	5YR	09/18/2019	2019-20/144
LIEUTENANT GOVERNOR					
Administration					
R622-2	Use of the Great Seal of the State of Utah	43595	5YR	03/19/2019	2019-8/105

Elections					
R623-1	Lieutenant Governor's Procedure for Regulation of Lobbyist Activities	43493	5YR	01/28/2019	2019-4/44
R623-2	Uniform Ballot Counting Standards	43494	5YR	01/28/2019	2019-4/44
R623-3	Utah State Plan on Election Reform	43495	5YR	01/28/2019	2019-4/45
R623-5	Municipal Alternate Voting Methods Pilot Project	43275	NEW	03/01/2019	2018-21/96
MONEY MANAGEMENT COUNCIL					
Administration					
R628-19	Requirements for the Use of Investment Advisers by Public Treasurers	43503	EXT	02/05/2019	2019-5/103
R628-19	Requirements for the Use of Investment Advisers by Public Treasurers	43645	5YR	04/12/2019	2019-9/87
R628-20	Foreign Deposits for Higher Education Institutions	43504	EXT	02/05/2019	2019-5/103
R628-20	Foreign Deposits for Higher Education Institutions	43646	5YR	04/12/2019	2019-9/88
R628-21	Conditions and Procedures for the Use of Reciprocal Deposits	43644	5YR	04/12/2019	2019-9/88
R628-22	Conditions and Procedures for the use of Negotiable Brokered Certificates of Deposit	43815	NEW	08/07/2019	2019-13/93
NATURAL RESOURCES					
Forestry, Fire and State Lands					
R652-70	Sovereign Lands	43480	AMD	03/25/2019	2019-3/28
R652-120	Wildland Fire Responsibilities	44149	5YR	10/24/2019	Not Printed
Oil, Gas and Mining; Coal					
R645-105	Blaster Training, Examination and Certification	43913	5YR	07/23/2019	2019-16/103
R645-106	Exemption for Coal Extraction Incidental to the Extraction of Other Minerals	43914	5YR	07/23/2019	2019-16/104
R645-400	Inspection and Enforcement: Division Authority and Procedures	43916	5YR	07/23/2019	2019-16/104
Oil, Gas and Mining; Oil and Gas					
R649-10	Administrative Procedures	43912	5YR	07/23/2019	2019-16/105
Parks and Recreation					
R651-206	Carrying Passengers for Hire	43497	AMD	03/25/2019	2019-4/7
R651-214	Temporary Registration	43464	AMD	02/21/2019	2019-2/12
R651-301	State Recreation Fiscal Assistance Programs	43416	AMD	01/24/2019	2018-24/20
R651-406	Off-Highway Vehicle Registration Fees	43415	AMD	01/24/2019	2018-24/23
R651-411	OHV Use in State Parks	43759	AMD	07/22/2019	2019-12/71
R651-615	Motor Vehicle Use	43756	AMD	07/22/2019	2019-12/73
Water Rights					
R655-3	Reports of Water Rights Conveyance	43922	5YR	07/27/2019	2019-16/105
R655-4	Water Wells	43923	5YR	07/27/2019	2019-16/106
R655-13	Stream Alteration	43743	R&R	07/25/2019	2019-12/74
Wildlife Resources					
R657-5	Taking Big Game	43431	AMD	02/07/2019	2019-1/37
R657-5	Taking Big Game	43741	AMD	07/22/2019	2019-12/79
R657-9	Taking Waterfowl, Wilson's Snipe and Coot	43430	AMD	02/07/2019	2019-1/41
R657-10	Taking Cougar	44028	AMD	10/22/2019	2019-18/63
R657-11	Taking Furbearers and Trapping	43414	AMD	01/24/2019	2018-24/25
R657-12	Hunting and Fishing Accommodations for People with Disabilities	43816	AMD	08/22/2019	2019-14/46
R657-13	Taking Fish and Crayfish	43420	AMD	01/24/2019	2018-24/27
R657-22	Commercial Hunting Areas	43491	AMD	03/25/2019	2019-4/22
R657-33	Taking Bear	43492	AMD	03/25/2019	2019-4/27
R657-37	Cooperative Wildlife Management Units for Big Game or Turkey	43724	AMD	07/22/2019	2019-12/82

R657-38	Dedicated Hunter Program	43432	AMD	02/07/2019	2019-1/44
R657-41	Conservation and Sportsman Permits	43736	AMD	07/22/2019	2019-12/91
R657-44	Big Game Depredation	43723	AMD	07/22/2019	2019-12/100
R657-45	Wildlife License, Permit, and Certificate of Registration Forms and Terms	43817	AMD	08/22/2019	2019-14/48
R657-46	The Use of Game Birds in Dog Field Trials and Training	43726	5YR	05/20/2019	2019-12/141
R657-54	Taking Wild Turkey	43951	5YR	08/05/2019	2019-17/226
R657-62	Drawing Application Procedures	43639	5YR	04/09/2019	2019-9/89
R657-62	Drawing Application Procedures	43725	AMD	07/22/2019	2019-12/104
R657-67	Utah Hunter Mentoring Program	43498	5YR	02/04/2019	2019-5/101
R657-68	Trial Hunting Authorization	43952	5YR	08/05/2019	2019-17/226
R657-69	Turkey Depredation	44145	5YR	10/22/2019	Not Printed

NAVAJO TRUST FUND

Trustees

R661-3-101	Eligibility	44075	NSC	09/25/2019	Not Printed
R661-8-101	Objective	44076	NSC	09/25/2019	Not Printed
R661-12-401	Documentation Required to Apply for UNTF HSL Assistance	44077	NSC	09/25/2019	Not Printed

PARDONS (BOARD OF)

Administration

R671-102	Americans with Disabilities Act Complaint Procedures	44097	5YR	09/23/2019	2019-20/145
R671-103	Attorneys	44096	5YR	09/23/2019	2019-20/145
R671-201	Original Hearing Schedule and Notice	44098	5YR	09/23/2019	2019-20/146
R671-309	Impartial Hearings	44109	5YR	09/30/2019	2019-20/146

PUBLIC SAFETY

Administration

R698-4	Certification of the Law Enforcement Agency of a Private College or University	43523	5YR	02/14/2019	2019-5/101
R698-5	State Hazardous Chemical Emergency Response Commission Advisory Committee	43418	AMD	02/20/2019	2018-24/29
R698-5	State Hazardous Chemical Emergency Response Commission Advisory Committee	43828	5YR	06/26/2019	2019-14/79

Criminal Investigations and Technical Services, Criminal Identification

R722-310	Regulation of Bail Bond Recovery and Enforcement Agents	44160	5YR	10/30/2019	Not Printed
R722-330	Licensing of Private Investigators	44161	5YR	10/30/2019	Not Printed
R722-380	Firearm Background Check Information	44162	5YR	10/30/2019	Not Printed
R722-900	Access to Bureau Records	43665	AMD	06/24/2019	2019-10/95
R722-920	Cold Case Database	43435	NEW	02/20/2019	2019-1/49

Driver License

R708-10	Driver License Restrictions	43590	5YR	03/15/2019	2019-7/65
R708-22	Commercial Driver License Administrative Proceedings	43606	5YR	03/28/2019	2019-8/106
R708-24	Renewal of a Commercial Driver License (CDL)	43607	5YR	03/28/2019	2019-8/106
R708-26	Learner Permit Rule	43591	5YR	03/15/2019	2019-7/66
R708-31	Ignition Interlock Systems	43592	5YR	03/15/2019	2019-7/66
R708-45	Renewal or Duplicate License for Utah Residents Temporarily Residing Out of State	44035	5YR	09/04/2019	2019-19/121

Emergency Management

R704-1	Search and Rescue Financial Assistance Program	43668	AMD	06/24/2019	2019-10/92
R704-1	Search and Rescue Financial Assistance Program	43827	5YR	06/26/2019	2019-14/79

Fire Marshal

R710-12	Hazardous Materials Training and Certification	43455	NEW	04/09/2019	2019-2/14

R710-15	Seizure and Disposal of Fireworks, Class A Explosives, and Class B Explosives	43354	NEW	01/14/2019	2018-22/155
Highway Patrol					
R714-500	Chemical Analysis Standards and Training	44022	5YR	08/29/2019	2019-18/97
R714-600	Performance Standards for Tow Truck Motor Carriers	43844	5YR	07/01/2019	2019-14/80
Peace Officer Standards and Training					
R728-205	Council Resolution of Public Safety Retirement Eligibility	44036	5YR	09/04/2019	2019-19/121
R728-409	Suspension, Revocation, or Relinquishment of Certification	43666	AMD	06/24/2019	2019-10/100
R728-502	Procedure for POST Instructor Certification	43534	5YR	02/21/2019	2019-6/45
R728-506	Canine Body Armor Restricted Account	44152	5YR	10/28/2019	Not Printed
PUBLIC SERVICE COMMISSION					
Administration					
R746-8-301	Calculation and Application of UUSF Surcharge	43550	AMD	04/30/2019	2019-6/27
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
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
REGENTS (BOARD OF)					
Administration					
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
R765-800	Free Expression on Campus	43930	NEW	10/19/2019	2019-16/68
R765-801	Student Due Process	43933	NEW	10/19/2019	2019-16/70
R765-802	Weapons on Campus	43935	NEW	10/19/2019	2019-16/73
R765-803	Institutional Policy Review	43947	NEW	10/19/2019	2019-16/74
Salt Lake Community College					
R784-1	Government Records Access and Management Act Rules	43594	5YR	03/17/2019	2019-8/107
R784-2	Free Expression on Campus	43895	NEW	10/17/2019	2019-15/15
R784-3	Weapons on Campus	43896	NEW	10/17/2019	2019-15/16
R784-4	Student Due Process	43897	NEW	10/17/2019	2019-15/18
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	2019-21/63
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

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
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
R957-2	Free Expression on Campus	43932	NEW	09/23/2019	2019-16/90
Tooele Technical College					
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
Uintah Basin Technical College					
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

Administration					
R861-1A-9	State Board of Equalization Procedures Pursuant to Utah Code Ann. Sections 59-2-212, 59-2-1004, and 59-2-1006	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
Auditing					
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
Motor Vehicle					
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

R873-22M-24	Salvage Vehicle Definitions Pursuant to Utah Code Ann. Sections 41-1a-1001 and 41-1a-1002	44009	AMD	10/24/2019	2019-18/69
R873-22M-26	Interim Inspections and Repair Standards Pursuant to Utah Code Ann. Section 41-1a-1002	44010	AMD	10/24/2019	2019-18/70
Property Tax					
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-27	Standards for Assessment Level and Uniformity of Performance Pursuant to Utah Code Ann. Sections 59-2-704 and 59-2-704.5	44012	AMD	10/24/2019	2019-18/72
R884-24P-33	2019 Personal Property Valuation Guides and Schedules Pursuant to Utah Code Ann. Section 59-2-301	44014	AMD	10/24/2019	2019-18/75
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					
Administration					
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
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
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
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

Operations, Maintenance					
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
Operations, Traffic and Safety					
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
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
Housing and Community Development					
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
Unemployment Insurance					
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