

UTAH STATE BULLETIN

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

The *Utah State Bulletin (Bulletin)* is an official noticing publication of the executive branch of Utah state government. The Office of Administrative Rules, part of the Department of Government Operations, 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 801-957-7110. Additional rulemaking information and electronic versions of all administrative rule publications are available at <https://rules.utah.gov/>.

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

Office of Administrative Rules, Salt Lake City 84114

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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 November 16, 2023, 12:00 a.m., and December 01, 2023, 11:59 p.m. are included in this, the December 15, 2023, 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 January 17, 2024. 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 April 15, 2024, 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

NOTICE OF PROPOSED RULE		
TYPE OF FILING: Amendment		
Rule or Section Number:	R35-1	Filing ID: 56201

Agency Information

1. Department:	Government Operations	
Agency:	Records Committee	
Street address:	346 S Rio Grande St	
City, state and zip:	Salt Lake City, UT 84101	
Contact persons:		
Name:	Phone:	Email:
Rebekkah Shaw	801-531-3851	rshaw@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule or section catchline:
R35-1. State Records Committee Appeal Hearing Procedures
3. Purpose of the new rule or reason for the change:
The changes here are intended to clarify how the Committee's orders are created, specifically that the order can include legal analysis not mentioned during deliberation.
4. Summary of the new rule or change:
A rewording of Section R35-1-3 is to clarify the petitioner has the burden of proof to show the governmental entity's search effort was not reasonable.
A rewording of Subsection R35-1-5(2) is to explain how the Committee's orders are created.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
There are no substantive changes being made regarding the fiscal impact of this rule. The changes clarify current practice.
B) Local governments:
There are no substantive changes being made regarding the fiscal impact of this rule. The changes clarify current practice.

C) Small businesses ("small business" means a business employing 1-49 persons):

There are no substantive changes being made regarding the fiscal impact of this rule. The changes clarify current practice.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):

There are no substantive changes being made regarding the fiscal impact of this rule. The changes clarify current practice.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

There are no substantive changes being made regarding the fiscal impact of this rule. The changes clarify current practice.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):

There are no substantive changes being made regarding the fiscal impact of this rule. All other changes are to clarify current practice.

G) Regulatory Impact Summary Table (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 will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$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
H) Department head comments on fiscal impact and approval of regulatory impact analysis:			
The Director of the Department of Government Operations, Marvin Dodge, has reviewed and approved this regulatory impact analysis.			

Citation Information

6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:		
Subsection 63G-2-502(2)		

Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	01/17/2024

9. This rule change MAY become effective on:	01/24/2024
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.	

Agency Authorization Information

Agency head or designee and title:	Kenneth Williams, Director and State Archivist	Date:	10/16/2023
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R35. Government Operations, Records Committee.**R35-1. State Records Committee Hearing Procedures.****R35-1-3. Burden of Proof.**

(1)(a) In cases where the appeal concerns whether the governmental entity possesses or maintains the requested records, the governmental entity must show by a preponderance of the evidence that its search for the requested records was reasonable.

(1)(b) Upon the governmental entity establishing by a preponderance of the evidence that its search was reasonable, the burden of proof shifts to the petitioner who must show by a preponderance of the evidence that the search efforts ~~lacked good faith~~ were not reasonable.

(2) In hearings concerning whether a person is a vexatious requester, the Committee shall examine the totality of the circumstances in determining that the person is a vexatious requester as outlined in Subsection 63G-2-209(9).

R35-1-5. Issuing the Committee Decision and Order.

(1) The Committee may issue the following Orders:

- (a) grant the petitioner's appeal in whole or in part;
- (b) deny the petitioner's appeal in whole or in part;
- (c) continue the hearing to a later date;
- (d) deny or allow a vexatious requester hearing;
- (e) declare a person a vexatious requester; or
- (f) require a governmental entity to make redactions in the record, ~~[unredact]~~remove redactions~~[-information]~~, or take other action necessary to carry out~~[effectuate]~~ the Decision and Order.

(2) ~~[The Committee may collaboratively draft its Order privately after the hearing.]~~In its Orders, the Committee may, as needed to comply with Subsection 63G-2-403(12)(a), cite to and analyze legal authority not voiced in its deliberations as long as the cited authority supports the dispositive motion the Committee voted upon in the hearing.

~~[(a) In its collaborative private drafting, the Committee may refine its reasoning to include legal authority, analysis, relevant facts, and other considerations not actually voiced in public deliberation.]~~

~~[(3) The Decision and Order must be signed by the Committee Chair and distributed by the Executive Secretary within seven business days after the hearing. Copies of each Decision and Order shall be distributed to the petitioner, the governmental entity and other interested parties. The original Order shall be maintained by the Executive Secretary. A copy of the Decision and Order shall be made available for public access at the Utah State Archives website.]~~

~~[(3)(a)(i) The Committee Chair or Chair pro tem shall sign the Decision and Order; and~~

~~[(ii) the Executive Secretary shall distribute the Decision and Order within seven business days after the hearing.]~~

~~[(b) The Executive Secretary shall distribute copies of each Decision and Order to the petitioner, the governmental entity, and other interested parties. The Committee shall maintain the original Order.]~~

~~[(4) The Committee shall make a copy of the Decision and Order available for public access on the Utah State Archives website.]~~

~~[(4)5] Before either party appeals an Order pursuant to Section 63G-2-404, the Committee may withdraw its Order by delivering notice to the parties of the withdrawal. Upon the withdrawal, the Executive Secretary shall add the withdrawn Order to the agenda of the next regularly scheduled public Committee meeting.~~

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

Date of Last Change: 2024~~[October 11, 2023]~~

Notice of Continuation: June 3, 2019

Authorizing, and Implemented or Interpreted Law: 63G-2-401(5)(c); 63G-2-403(9); 63G-2-403(4)(a); 63G-2-201; 63A-12-101; 52-4-203

NOTICE OF PROPOSED RULE

TYPE OF FILING: Amendment

Rule or Section Number:	R35-2	Filing ID: 56201
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Agency Information

1. Department:	Government Operations	
Agency:	Records Committee	
Street address:	346 S Rio Grande St	
City, state and zip:	Salt Lake City, UT 84101	
Contact persons:		
Name:	Phone:	Email:
Rebekkah Shaw	801-531-3851	rshaw@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule or section catchline:
R35-2. Scheduling and Declining Hearings
3. Purpose of the new rule or reason for the change:
This change is to bring this rule more in line with statute, see Subsection 63G-2-403(4)(b).
4. Summary of the new rule or change:
An update for Subsections R35-2-2(1)(a) and R35-2-3(1)(a) removes a second member of the Committee when the Executive Secretary recommends an appeal be denied.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
There are no substantive changes being made regarding the fiscal impact of this rule. The changes clarify current practice.
B) Local governments:
There are no substantive changes being made regarding the fiscal impact of this rule. The changes clarify current practice.
C) Small businesses ("small business" means a business employing 1-49 persons):
There are no substantive changes being made regarding the fiscal impact of this rule. The changes clarify current practice.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
There are no substantive changes being made regarding the fiscal impact of this rule. The changes clarify current practice.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

There are no substantive changes being made regarding the fiscal impact of this rule. The changes clarify current practice.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):

There are no substantive changes being made regarding the fiscal impact of this rule. All other changes are to clarify current practice.

G) Regulatory Impact Summary Table (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 will be included in narratives above.)

Regulatory Impact Table			
Fiscal Cost	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$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

H) Department head comments on fiscal impact and approval of regulatory impact analysis:

The Director of the Department of Government Operations, Marvin Dodge, has reviewed and approved this regulatory impact analysis.

Citation Information

6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:

Subsection 63G-2-502(2)	Subsection 63G-2-403(4)(b) (ii)(B)	
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Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	01/17/2024
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9. This rule change MAY become effective on:	01/24/2024
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NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

Agency Authorization Information

Agency head or designee and title:	Kenneth Williams, Director and State Archivist	Date:	10/16/2023
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R35. Government Operations, Records Committee.

R35-2. Scheduling and Declining Hearings.

R35-2-2. Scheduling and Declining Requests for Appeal Hearings.

(1)(a) To decline a request for a hearing under Subsection 63G-2-403(4), the Executive Secretary shall consult with the Committee Chair and at least one other member of the Committee.

([a]b) The Committee Chair ~~and one other member of the Committee~~ must ~~[both]~~ agree with the Executive Secretary's recommendation to decline to schedule a hearing. Such a decision shall consider the potential for a public interest claim as the petitioner may ~~[be]~~ put forward ~~[by the petitioner]~~ under Subsection 63G-2-403(11)(b).

([b]c) The Executive Secretary's notice to the petitioner indicating that the ~~Committee Chair declined the request for a hearing~~ ~~[has been declined]~~, as provided for in Subsection 63G-2-403(4)(b)(ii)(A), shall include a copy of the previous Order of the Committee holding that the records at issue are appropriately classified.

(2)(a) In any appeal to the Committee of a governmental entity's denial of access to records because the record is not maintained by the governmental entity, the petitioner shall provide sufficient evidence in the petitioner's statement of facts, reasons, and legal authority in support of the appeal, that the record was maintained by the governmental entity at one time, or that the

governmental entity has concealed, or has not sufficiently or has improperly searched for the record.

(b) The Committee Chair shall determine whether or not the petitioner has provided sufficient evidence.

(c) If the Committee Chair determines that the petitioner provided sufficient evidence ~~[has been provided]~~, the Chair shall direct the Executive Secretary to schedule a hearing.

(d) If the Committee Chair determines that the petitioner has not provided sufficient evidence ~~[has not been provided]~~, the Chair shall direct the Executive Secretary to not schedule a hearing and to inform the petitioner of the determination.

(e) Evidence that a governmental entity has disposed of the record according to retention schedules is sufficient basis for the Chair to direct the Executive Secretary to not schedule a hearing.

(3) To file an appeal, the petitioner must submit the following:

(a) a copy of the petitioner's initial records request, or a statement of the specific records requested if a copy is unavailable to the petitioner;

(b) a copy of any records appeals;

(c) a copy of the final responses from the respondents containing their decisions regarding the records request and appeals; and

(d) ~~and~~ a statement of relief sought.

(4)(a) If the petitioner fails to provide any of the documents under R35-2-2(3) ~~[have not been provided]~~, the Executive Secretary shall notify the petitioner that until the proper information is submitted, a hearing cannot be scheduled ~~[until the proper information is submitted]~~.

(b) Pursuant to Subsections 63G-2-403(2) and (4)(a), ~~[F]~~ the petitioner must provide the missing information within seven days of receipt of the notice ~~[in order]~~ for the Executive Secretary to consider a notice of appeal ~~[to be considered]~~ filed ~~[pursuant to Subsections 63G-2-403(2) and (4)(a)]~~.

(5) Pursuant to Subsection 63G-2-403(1)(a), the Executive Secretary will not schedule an ~~[An]~~ appeal not timely received ~~[pursuant to Subsection 63G-2-403(1)(a) will not be scheduled]~~.

(6) Pursuant to Title 63G, Chapter 2, Part 7, Applicability to Political Subdivisions, the Judiciary, and the Legislature, and to Subsection 63G-2-402(1)(b), the Executive Secretary may not schedule an ~~[An]~~ appeal pertaining to the Judiciary, Legislature, or to a political subdivision that has established a local appeals board that has not yet received and addressed the appeal, because it is not within the Committee's jurisdiction ~~[and will not be scheduled pursuant to Title 63G, Chapter 2, Part 7, Applicability to Political Subdivisions, the Judiciary, and the Legislature, and to Subsection 63G-2-402(1)(b)]~~.

(7) The Committee shall deny the request from ~~[H]~~ a governmental entity ~~[requests]~~ to have an appeal dismissed due to lack of jurisdiction after a petitioner fails ~~[by challenging the Committee's jurisdiction based on failure of the petitioner]~~ to serve notice of appeal to the governmental entity pursuant to Subsection 63G-2-403(3)(a) ~~[the Committee shall deny the request]~~.

(8) The Executive Secretary shall report on appeals received at each regularly scheduled meeting of the Committee to provide a public record of the actions taken.

(9)(a) If a Committee member has requested a discussion to reconsider the decision to decline or not schedule a hearing, the Committee may, after discussion and by a majority vote, choose to reverse the decision and hold a hearing.

NOTICES OF PROPOSED RULES

(b) The discussion of reconsideration is restricted to Committee members currently present, and it shall include only~~[Any discussion of reconsideration shall be limited to those Committee members then present, and shall be based only on]~~ the following two questions:

(i) whether the records ~~[being]~~ requested were covered by a previous Order of the Committee; and

(ii) whether the petitioner has, or is likely to, put forth a public interest claim.

~~[(c) Neither the petitioner nor the agency whose records are requested shall be heard at this time.]~~

~~(c)~~ (d) If the Committee votes to hold a hearing, the Executive Secretary shall schedule it on the agenda of the next regularly scheduled Committee meeting.

(10) The Executive Secretary shall compile and include in an annual report to the Committee a complete documented list of hearings held, withdrawn, and declined.

(11)(a) A party may submit a brief statement of facts and arguments in support or against the requested relief that shall be no longer than 15 pages double-spaced.

(b) The format should adhere to the Utah Rules of Civil Procedure Rule 10(d).

(c) Either party may request ~~[Requests can be made of]~~ the Chair to allow a longer statement of facts.

R35-2-3. Scheduling and Declining Requests for Vexatious Requester Hearings.

(1) To decline a request for a hearing under Section 63G-2-209, the Executive Secretary shall consult with the Chair and one other member of the Committee.

(a) The Committee Chair ~~[and one other member of the Committee]~~ must ~~[both]~~ agree with the Executive Secretary's recommendation to decline to schedule a hearing.

(b) The Executive Secretary's notice to the petitioner and respondent shall include the reasons for the denial and notify the parties that the Committee will vote to accept or reject the recommendation to deny the petition without a hearing.

(c) Upon notifying the parties of the denial, the Executive Secretary shall add an action item to the next meeting agenda when the Committee will vote to accept or reject the denial.

(2) To request a hearing on whether an individual is a vexatious requester, the governmental entity must submit the following:

(a) the name, phone number, mailing address, and email address of the respondent;

(b) a description of the conduct that the governmental entity claims demonstrates that the respondent is a vexatious requester;

(c) a statement of the relief sought;

(d) a sworn or unsworn declaration; and

(e) verification that the governmental entity sent a copy of the petition ~~[was sent]~~ to the respondent.

(f) If the governmental entity has not provided ~~[any of]~~ the information required in Subsection R35-2-3(2) ~~[have not been provided]~~, the Executive Secretary shall notify the governmental entity that a hearing may not ~~[cannot]~~ be scheduled until the proper information is submitted.

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

Date of Last Change: 2024~~[October 12, 2023]~~

Notice of Continuation: June 3, 2019

Authorizing, and Implemented or Interpreted Law: 63G-2-402(1)(b); 63G-2-403(1); 63G-2-403(2); 63G-2-403(3)(a); 63G-2-403(4); 63G-2-403(4)(b)(ii)(A); 63G-2-403(11)(b); 63G-2-502

NOTICE OF PROPOSED RULE

TYPE OF FILING: Repeal

Rule or Section Number:	R156-60	Filing ID: 56209
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Agency Information

1. Department:	Commerce	
Agency:	Professional Licensing	
Building:	Heber M. Wells Building	
Street address:	160 E 300 S	
City, state and zip:	Salt Lake City, UT 84111-2316	
Mailing address:	PO Box 146741	
City, state and zip:	Salt Lake City, UT 84114-6741	
Contact persons:		
Name:	Phone:	Email:
Jana Johansen	801-530-6628	janajohansen@utah.gov

Please address questions regarding information on this notice to the persons listed above.

General Information

2. Rule or section catchline:

R156-60. Mental Health Professional Practice Act Rule

3. Purpose of the new rule or reason for the change:

The Division of Professional Licensing (Division) in collaboration with the Clinical Mental Health Licensing Board, Marriage and Family Therapist Licensing Board, Social Worker Licensing Board, and the Substance Use Disorder Counselor Licensing Board makes this filing with the intent that the Mental Health Professional Practice Act Rule be repealed (Rule R156-60) and the provisions of this rule added in each of the professions existing rules, specifically Rules R156-60a, R156-60b, R156-60c, and R156-60d.

(EDITOR'S NOTES: The proposed amendment to Rule R156-60a is under ID 56210, the proposed amendment to Rule R156-60b is under ID 56211, the proposed amendment to Rule R156-60c is under ID 56216, and the proposed amendment to Rule R156-60d is under ID 56217 all in this issue, December 15, 2023, of the Bulletin.)

4. Summary of the new rule or change:

This rule is being repealed in its entirety due to statute changes in H.B. 250 passed in the 2023 General Session.

Public Hearing Information:

There will be a public hearing on 01/16/2024 at 9:00 AM at the Heber Wells Building, 160 E 300 S, Conference Room 474, Salt Lake City, UT. Also available via Google Meet (see below).

Google Meeting link:
meet.google.com/yfq-psko-xgt

Or join by phone:
(US) +1 304-691-0096
PIN: 605869246

Fiscal Information**5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:****A) State budget:**

The proposed changes are not expected to have any fiscal impact on state government revenues or expenditures.

The requested changes reflect a repeal and moving provisions of current industry standards as approved by the Clinical Mental Health Licensing Board, Marriage and Family Therapist Licensing Board, Social Worker Licensing Board, and the Substance Use Disorder Counselor Licensing Board and will continue to ensure that the minimum required standards have been met.

B) Local governments:

The proposed changes are not expected to have any fiscal impact on local governments' revenues or expenditures.

The requested changes reflect a repeal and moving provisions of current industry standards as approved by the Clinical Mental Health Licensing Board, Marriage and Family Therapist Licensing Board, Social Worker Licensing Board, and the Substance Use Disorder Counselor Licensing Board and will continue to ensure that the minimum required standards have been met.

C) Small businesses ("small business" means a business employing 1-49 persons):

The proposed changes are not expected to have any fiscal impact on small businesses' revenues or expenditures.

The requested changes reflect a repeal and moving provisions of current industry standards as approved by the Clinical Mental Health Licensing Board, Marriage and Family Therapist Licensing Board, Social Worker Licensing Board, and the Substance Use Disorder Counselor Licensing Board and will continue to ensure that the minimum required standards have been met.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):

The proposed changes are not expected to have any fiscal impact on non-small businesses' revenues or expenditures.

The requested changes reflect a repeal and moving provisions of current industry standards as approved by the Clinical Mental Health Licensing Board, Marriage and Family Therapist Licensing Board, Social Worker Licensing Board, and the Substance Use Disorder Counselor Licensing Board and will continue to ensure that the minimum required standards have been met.

None of these changes substantively change the processes for affected persons, so there is no fiscal impact.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an *agency*):

The proposed changes are not expected to have any fiscal impact on affected persons.

The requested changes reflect a repeal and moving provisions of current industry standards as approved by the Clinical Mental Health Licensing Board, Marriage and Family Therapist Licensing Board, Social Worker Licensing Board, and the Substance Use Disorder Counselor Licensing Board and will continue to ensure that the minimum required standards have been met.

None of these changes substantively change the processes for affected persons, so there is no fiscal impact.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):

As described above in Box 5(E) for other persons, the proposed changes are not expected to have any compliance costs for affected persons.

G) Regulatory Impact Summary Table (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 will be included in narratives above.)**Regulatory Impact Table**

Fiscal Cost	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0

NOTICES OF PROPOSED RULES

Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$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

H) Department head comments on fiscal impact and approval of regulatory impact analysis:

The Executive Director of the Department of Commerce, Margaret W. Busse, has reviewed and approved this fiscal analysis.

The Division proposes repealing this rule and moving the provisions of this rule into existing rules (R156-60a, R156-60b, R156-60c, and R156-60d) separated for types of mental health professionals.

The new provisions will incorporate part of this repealed rule, amend the separate rules in response to the statutory changes made by H.B. 250 (2023). The amendments incorporate parts of the repealed rule, contain the proposed amendments, make nonsubstantive formatting changes to streamline and to update the rules, clarify and update definitions, and comply with the Rulewriting Manual for Utah.

Small Businesses (less than 50 employees):

Due to the repeal of this rule and as noted in the separate rules submitted concurrently, the Division does not expect any foreseeable impact on small businesses in the mental health professions in the state of Utah. The proposed amendments are to conform to the requirements of H.B. 250 (2023).

The changes are to move the provisions of this rule due to the repeal of this rule (Rule R156-60) into the other rules to update and encompass current statutory requirements and practices in the profession.

Further, the Division does not foresee any negative impact on small businesses since grammatical and formatting amendments are made to make the other rules comport with the Rulewriting Manual for Utah.

Regulatory Impact to Non-Small Businesses (50 or more employees):

The Division finds that the non-small businesses in the mental health professions in the state of Utah will not suffer a negative fiscal impact from the repeal of Rule R156-60 and the proposed incorporation of Rule R156-60 into Rules R156-60a, R156-60b, R156-60c, and R156-60d, along with the statutory amendments.

However, these amendments will have no expected fiscal impact for non-small businesses in Utah for the same rationale as described above for small businesses.

Further, any of these costs are either inestimable, for the reasons stated above, or there is no fiscal impact.

Citation Information

6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:

Subsection 58-1-106(1)(a)	Subsection 58-1-202(1)(a)	Section 58-60-101
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Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:		01/17/2024
B) A public hearing (optional) will be held:		
Date:	Time:	Place (physical address or URL):
01/16/2024	9:00 AM	See information in Box 4 above.

9. This rule change MAY become effective on: 01/24/2024

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

Agency Authorization Information

Agency head or designee and title:	Mark B. Steinagel, Division Director	Date:	11/20/2023
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R156. Commerce, Occupational and Professional Licensing.
[R156-60. Mental Health Professional Practice Act Rule.
R156-60-101. Title.

_____ This rule is known as the "Mental Health Professional Practice Act Rule."

R156-60-102. Definitions.

_____ In addition to the definitions regarding mental health professional practice in Title 58, Chapters 1 and 60, as used in Title 58, Chapters 1 and 60, the following rule definitions supplement the statutory definitions:

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

_____ (a) Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition: DSM-5 published by the American Psychiatric Association;

_____ (b) 2015 ICD-10 CM for Physicians, Professional Edition published by the American Medical Association; or

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

_____ (2) "Client" or "patient" means an individual who if competent requests, or if not competent to request is lawfully provided professional services by a mental health therapist when the mental health therapist:

_____ (a) agrees verbally or in writing to provide professional services to that individual; or

_____ (b) without an overt agreement does in fact provide professional services to that individual.

_____ (3) "Direct supervision" of a supervisee in training, as used in Subsections 58-60-205(1)(f), 58-60-305(1)(f), 58-60-405(1)(f), and 58-60-502(3) means the supervisor meets with the supervisee:

_____ (a) when both are physically present in the same room at the same time; or

_____ (b) remotely via real time electronic methods that allow for visual and audio interaction between the supervisor and supervisee, in accordance with the requirements of their supervision contract.

_____ (4) "Employee" means a W-2 employee as defined by the Internal Revenue Service.

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

_____ (6) "On the job training program" means a program that:

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

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

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

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

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

_____ (7) "Supervision contract" means a written, signed contract between a supervisor and a supervisee to complete supervised

training requirements for licensure, which includes the provisions required by Subsection R156-60-302(1).

_____ (8) "Supervision form" means the form provided by the Division to document ongoing supervision, which at minimum includes:

_____ (a) the dates and duration of supervisory meetings;

_____ (b) the format of supervisory meetings;

_____ (c) the location of supervisory meetings;

_____ (d) an evaluation of supervisee performance; and

_____ (e) confirmation that the meetings took place.

_____ (9) "Verification of supervision form" means the form provided by the Division to document who is providing supervision to the supervisee, which at minimum includes:

_____ (a) the name and license number of the supervisee;

_____ (b) the name and license number of the supervisor; and

_____ (c) the supervisee's place of employment.

R156-60-103. Authority—Purpose.

_____ This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 60.

R156-60-104. Organization—Relationship to Rule R156-1.

_____ The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-107.

R156-60-105. Continuing Education.

_____ In accordance with Section 58-60-105, the continuing professional education (CE) requirements for each two-year renewal cycle commencing on October 1 of each even numbered year, are established as follows:

_____ (1) An individual licensed under Title 58, Chapter 60 shall complete at least 40 CE hours, or 20 hours for an SSW or CSW, to include:

_____ (a) six hours of education in ethics, law, or technology;

_____ (b) two hours of training in suicide prevention in accordance with Section R156-60-205; and

_____ (c) for a marriage and family therapist, the following required hours under this subsection shall be directly related to marriage and family therapy:

_____ (i) at least 15 hours of the 40 CE hours; and

_____ (ii) at least three hours of the six hours in ethics, law, or technology.

_____ (2) A licensee who completes more than the required number of CE hours during a two-year renewal cycle may carry over excess hours to the next two-year renewal cycle, as follows:

_____ (a) for an SSW or CSW, up to five hours of the excess; and

_____ (b) for other licensees, up to ten hours of the excess.

_____ (3) A licensee may not carry forward any CE hours received prior to being granted a license, including professional upgrades.

_____ (4) If a licensee first becomes licensed during the two-year renewal period, the licensee's required number of CE hours shall be decreased proportionately according to the date of licensure.

_____ (5) The Division may defer or waive CE requirements in accordance with Section R156-1-308d.

_____ (6) CE shall:

_____ (a) be relevant to the licensee's scope of practice;

_____ (b) have a method of verification of attendance and completion;

_____ (c) be prepared and presented by individuals who are qualified by education, training, and experience to provide CE; and

NOTICES OF PROPOSED RULES

_____ (d) be approved by, conducted by, or under the sponsorship of one of the following:

- _____ (i) a recognized accredited college or university;
- _____ (ii) a county, state, or federal agency;
- _____ (iii) a professional association or similar body involved in mental health therapy;

_____ (iv) a mental health agency that provides mental health services; or

_____ (v) the Division.

_____ (7) A licensee may recognize CE credit as follows:

_____ (a) for the following forms of education, one CE hour for each 50 minutes of education:

- _____ (i) lectures;
- _____ (ii) seminars;
- _____ (iii) conferences;
- _____ (iv) training sessions;
- _____ (v) real time, interactive distance learning courses that are clearly documented as real time and interactive; and

_____ (vi) specialty certifications;

_____ (b) for college or university credit courses directly related to the licensee's scope of practice, three CE hours per semester hour, or 1.5 CE hours per quarter hour;

_____ (c) for distance learning courses that are not real time and interactive, one hour of CE for each hour, up to a maximum of:

- _____ (i) 15 CE hours for an LCSW;
- _____ (ii) eight hours for an SSW or CSW;
- _____ (iii) 15 CE hours for an MFT;
- _____ (iv) ten CE hours for a CMHC; and
- _____ (v) 15 CE hours for a SUDC;

_____ (d)(i) for each hour of lecturing or instructing a CE course or teaching in a college or university in the licensee's profession, two CE hours, or one hour for an SW, up to a maximum of:

- _____ (A) ten CE hours for an LCSW;
- _____ (B) five CE hours for an SSW or CSW;
- _____ (C) 14 CE hours for an MFT;
- _____ (D) ten CE hours for a CMHC; and
- _____ (E) ten CE hours for a SUDC;

_____ (ii) credit may be granted for lecturing or instructing the same course up to two times;

_____ (e) for each hour of certifiable clinical readings, one CE hour, up to a maximum of:

- _____ (i) 15 CE hours for a MFT;
- _____ (ii) 15 CE hours for a SUDC; and
- _____ (iii) ten hours for a CMHC;

_____ (f) for each hour of direct supervision of an individual completing the experience requirement for licensure in a mental health therapist classification under Title 58, Chapter 60, one CE hour, up to a maximum of:

- _____ (i) 14 CE hours for a MFT; and
- _____ (ii) ten CE hours for a CMHC; and

_____ (g) for each hour of volunteer service on boards, committees, or in leadership roles in any state, national, or international organization for the development and improvement of the licensee's profession, one CE hour, in whole or part of which may be counted as regular credit or ethics, law, or technology credit, up to a maximum of six CE hours during each two-year period.

_____ (8) A licensee shall maintain adequate documentation as proof of compliance with this section for a period of two years after the end of the renewal cycle for which the CE is due. At minimum, the documentation for each course taken shall include:

- _____ (a) name of attendee;
- _____ (b) name of course provider;

_____ (c) name of instructor;

_____ (d) date of course;

_____ (e) title of course;

_____ (f) number of CE hours;

_____ (g) course objectives; and

_____ (h) type of CE albeit a seminar, real time interactive distance learning, teaching.

~~R156-60-205. Qualifications for Licensure and License Renewal – Suicide Prevention Course.~~

_____ The minimum two-hour suicide prevention course required as a qualification for licensure by Subsections 58-60-205(1)(e)(iii) for a social worker, 58-60-305(1)(e)(iv) for a marriage and family therapist, 58-60-405(1)(e)(iv) for a clinical mental health counselor, and 58-60-506(5)(b)(ii) for a substance use disorder counselor, and the minimum two-hour suicide prevention course required as a condition of license renewal by Subsection 58-60-105(3), shall meet the following standards:

_____ (1) The course shall be approved by, conducted by, or under the sponsorship of one of the following:

- _____ (a) a recognized accredited college or university;
- _____ (b) a county, state, or federal agency;
- _____ (c) a professional association or similar body involved in mental health therapy; or
- _____ (d) a mental health agency that provides mental health services.

_____ (2) The content of the course shall be relevant to mental health therapy, suicide prevention, consistent with the laws of this state, and include one or more of the following components:

- _____ (a) suicide concepts and facts;
- _____ (b) suicide risk assessment, crisis intervention, and first aid;
- _____ (c) evidence-based intervention for suicide risk;
- _____ (d) continuity of care and follow-up services for suicide risk; and
- _____ (e) therapeutic alliances for intervention in suicide risk.

_____ (3) Each hour of education shall consist of 50 minutes of education in the form of classroom lectures and discussion, workshops, webinars, online self-paced modules, case study review, or simulations.

_____ (4) The course provider shall document and verify course attendance and completion.

_____ (5)(a) An applicant for licensure shall submit evidence of course completion to the Division as a prerequisite for licensure.

_____ (b) A licensee renewing their license shall maintain adequate documentation of course completion as required by Subsection R156-60-105(8).

~~R156-60-302. Supervised Training Requirements – Supervision Contract – Duties and Responsibilities of Supervisor and Supervisee.~~

_____ The supervised training qualifications for licensure required by Subsections 58-60-204(1)(e)(ii) and (1)(f) for a social worker, Subsections 58-60-305(1)(e)(ii) and (1)(f) for a marriage and family therapist, Subsections 58-60-405(1)(d)(ii) and (1)(e) for a clinical mental health counselor, and Subsections 58-60-506(2)(e) and (5)(e) for a substance use disorder counselor, are established and clarified as follows:

_____ (1) Prior to beginning supervised training:

- _____ (a) the prospective supervisor and supervisee shall enter into a written supervision contract signed by both parties; and
- _____ (b) the prospective supervisor shall submit to the Division:

~~_____ (i) a complete verification of supervision form; and~~
~~_____ (ii) certification that the supervision contract meets the requirements of Section R156-60-302.~~

~~_____ (2) A supervisee may not count any supervised training towards their supervision requirement until the Division notifies the supervisor it has received the verification of supervision form.~~

~~_____ (3) A supervision contract shall include at least the following provisions:~~

~~_____ (a) duties and responsibilities of the supervisor;~~

~~_____ (b) duties and responsibilities of the supervisee;~~

~~_____ (c) a plan to ensure accessibility of the supervisor to the supervisee;~~

~~_____ (d) a plan for meetings between the supervisor and supervisee, addressing:~~

~~_____ (i) frequency;~~

~~_____ (ii) duration;~~

~~_____ (iii) objectives;~~

~~_____ (iv) format, such as individual or small group; and~~

~~_____ (v) location, such as face to face or remotely;~~

~~_____ (e) a plan for documenting the ongoing supervision using the Division provided supervision form, including objective and measurable circumstances where the supervisor will sign supervision forms;~~

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

~~_____ (g) remedies in the event of breach of contract by either the supervisor or supervisee, including procedures for contract termination; and~~

~~_____ (h) if any part of the supervision will be conducted remotely, plans for:~~

~~_____ (i) how the supervisor and supervisee will meet via real-time electronic methods allowing visual or audio interaction, and protect the security of electronic, confidential data and information;~~

~~_____ (ii) how the supervisor will comply with the supervisor's duties and responsibilities as established in rule;~~

~~_____ (iii) how the supervisor will physically visit the location where the supervisee practices on at least a quarterly basis during the period of supervision, or at such lesser frequency as is approved in advance by the Division in collaboration with the Board; and~~

~~_____ (iv) how notice will be provided to the supervisee's clients or patients and employer regarding the supervisee's use of remote supervision.~~

~~_____ (4) A supervisor shall have the following duties and responsibilities:~~

~~_____ (a) prior to beginning any supervised training:~~

~~_____ (i) ensure that the supervisor and supervisee:~~

~~_____ (A) are both appropriately licensed;~~

~~_____ (B) enter into a written supervision contract together in accordance with Subsection (3);~~

~~_____ (ii) submit to the Division the verification of supervision form; and~~

~~_____ (iii) receive notice from the Division that it has received the supervision form;~~

~~_____ (b) ensure that during the period of supervised training:~~

~~_____ (i) the supervisee is employed as a W-2 employee by a public or private mental health agency;~~

~~_____ (ii) the supervisor and supervisee remain appropriately licensed; and~~

~~_____ (iii) the supervisor supervises no more than the maximum number of supervisees allowed by the licensee's licensing act or rule;~~

~~_____ (c) comply with the terms of the supervision contract;~~

~~_____ (d) maintain a relationship with the supervisee in which the supervisor is independent from control by the supervisee, and in which the ability of the supervisor to supervise and direct the practice of the supervisee is not compromised;~~

~~_____ (e) be available to the supervisee for advice, consultation, and direction consistent with the standards and ethics of the profession and the requirements suggested by the total circumstances, including consideration of the supervisee's level of training, diagnosis of patients, and other factors known to the supervisee and supervisor;~~

~~_____ (f) periodically review the client records assigned to the supervisee;~~

~~_____ (g) comply with the confidentiality requirements of Section 58-60-114;~~

~~_____ (h) monitor the supervisee's performance for compliance with the laws, rules, standards, and ethics of the profession, and report violations to the Division; and~~

~~_____ (i) upon completion of the supervised training, submit to the Division on the Division provided supervision forms:~~

~~_____ (i) documentation of the training hours completed by the supervisee; and~~

~~_____ (ii) an evaluation of the supervisee with respect to the quality of the work performed and the supervisee's competency to practice in the profession.~~

~~_____ (5) A supervisee shall have the following duties and responsibilities:~~

~~_____ (a) prior to beginning any supervised training:~~

~~_____ (i) enter into a written supervision contract with the supervisor in accordance with Subsection (3); and~~

~~_____ (ii) ensure the required verification of supervision form is received by the Division;~~

~~_____ (b) maintain required licensure;~~

~~_____ (c) maintain employment as a W-2 employee with a public or private mental health agency;~~

~~_____ (d) comply with the terms of the supervision contract;~~

~~_____ (e) maintain a relationship with the supervisor in which the supervisor is independent from the supervisee's control, and in which the ability of the supervisor to supervise and direct the practice of the supervisee is not compromised;~~

~~_____ (f) be professionally responsible for the acts and practices of the supervisee that are a part of the required supervised training;~~

~~_____ (g) comply with the confidentiality requirements of Section 58-60-114; and~~

~~_____ (h) comply with applicable laws, rules, standards, and ethics of the profession.~~

~~_____ (6) A supervisor shall notify the Division in writing of any of the following changes, within 30 days of the change:~~

~~_____ (a) termination of a supervision contract; or~~

~~_____ (b) a change in the supervisee's placement of employment.~~

~~_____ (7)(a) If a supervisor does not support issuance of a license to a supervisee to practice unsupervised, or if the supervisor has other concerns regarding the supervisee that the supervisor believes requires input from the Division and Board, the supervisor shall submit to the Division a written explanation outlining the supervisor's concerns.~~

~~_____ (b) Upon receipt of written concerns from a supervisor with respect to a supervisee, the Division:~~

~~_____ (i) shall provide the supervisee an opportunity to respond in writing to the Division regarding the supervisor's concerns;~~

~~_____ (ii) shall review the written statements from the supervisor and supervisee with the Board; and~~

NOTICES OF PROPOSED RULES

~~(iii) in consultation with the Board, may require the supervisee to obtain additional supervised hours, education, and training.~~

~~R156-60-502. Unprofessional Conduct.~~

~~"Unprofessional conduct" includes:~~

~~(1) if providing services remotely;~~

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

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

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

~~(2) failing to follow the Model Standards of Practice for Child Custody Evaluation of the Association of Family and Conciliation Courts (AFCC) May 2006, which is incorporated by reference; or~~

~~(3) violating a provision of Section R156-60-302 regarding supervised training.~~

KEY: licensing, mental health, therapists

Date of Last Change: May 1, 2023

Notice of Continuation: February 26, 2019

Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-60-101]

NOTICE OF PROPOSED RULE

TYPE OF FILING: Amendment

Rule or Section Number:	R156-60a	Filing ID: 56210
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Agency Information

1. Department:	Commerce	
Agency:	Professional Licensing	
Building:	Heber M. Wells Building	
Street address:	160 E 300 S	
City, state and zip:	Salt Lake City, UT 84111-2316	
Mailing address:	PO Box 146741	
City, state and zip:	Salt Lake City, UT 84114-6741	
Contact persons:		
Name:	Phone:	Email:
Jana Johansen	801-530-6628	janajohansen@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule or section catchline:
R156-60a. Social Worker Licensing Act Rule

3. Purpose of the new rule or reason for the change:

The Division of Professional Licensing (Division) in collaboration with Social Worker Licensing Board makes this filing with the intent that the amendments being proposed incorporate changes due to H.B. 250 passed during the 2023 General Session, merge provisions found in Rule R156-60, which is being recommended for repeal, and correct grammar and formatting errors.

4. Summary of the new rule or change:

Amendment to Section R156-60a-101 adds the remainder of a sentence that was missed in the last revision.

Amendment to Section R156-60a-102 adds definitions from the Mental Health Practice Act Rule R156-60 (being repealed) which will provide clarity and continuity for readers. This section also includes grammar and formatting corrections.

Amendment to Section R156-60a-302a corrects grammar and citation number.

Amendment to Section R156-60a-302b corrects grammar and citation number.

Amendment to Section R156-60a-302c adds provisions regarding supervision being repealed with the Mental Health Practice Act Rule. In addition, grammar, formatting, and citation corrections are proposed.

Amendments to Section R156-60a-302d reflect changes enacted with H.B. 250 (2023), as well as make grammar and citation corrections.

Amendments to Section R156-60a-302e remove this section as it is better incorporated in a later section of the rule.

Amendments to Section R156-60a-302f include the removal of the original Section R156-60a-302f which reflects changes made by H.B. 250 (2023). The proposed Section R156-60a-302f clarifies what constitutes the required suicide prevention course, as well as incorporating provisions from the repealed Rule R156-60.

Amendments to Section R156-60a-303 correct grammar.

Amendments to Section R156-60a-304 add provisions regarding continuing education being repealed with the Mental Health Practice Act Rule.

Amendments to Section R156-60a-305a add provisions regarding supervisor eligibility being repealed with the Mental Health Practice Act Rule.

Amendments to Section R156-60a-305b add provisions regarding supervised experience, supervision contracts, and the duties and responsibilities of a supervisor and supervisee being repealed with the Mental Health Practice Act Rule.

Amendments to Section R156-60a-502 correct formatting, grammar, and citations.

Amendments to R156-60a-601 remove this section as it is incorporated in Section R156-60a-302b.

(EDITOR'S NOTE: The proposed repeal of Rule R156-60 is under ID 56209 in this issue, December 15, 2023, of the Bulletin.)

Public Hearing Information:

There will be a public hearing on 01/16/2024 at 9:00 AM at the Heber Wells Building, 160 E 300 S, Conference Room 474, Salt Lake City, UT. Also available via Google Meet (see below).

Google Meeting link:
meet.google.com/yfq-psko-xgt

Or join by phone:
(US) +1 304-691-0096
PIN: 605869246

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:

A) State budget:

The proposed changes are not expected to have any fiscal impact on state government revenues or expenditures.

The requested changes reflect current industry standards as approved by the Social Worker Licensing Board and will continue to ensure that the minimum required standards have been met.

B) Local governments:

The proposed changes are not expected to have any fiscal impact on local governments' revenues or expenditures.

This rule has been amended to provide technical, conforming, and stylistic changes in accordance with the Rulewriting Manual for Utah and current industry standards as approved by the Social Worker Licensing Board and will continue to ensure that the minimum required standards have been met.

None of these changes substantively change the processes so there is no fiscal impact.

C) Small businesses ("small business" means a business employing 1-49 persons):

The proposed changes are not expected to have any fiscal impact on small businesses' revenues or expenditures.

This rule has been amended to provide technical, conforming, and stylistic changes in accordance with the Rulewriting Manual for Utah and current industry

standards as approved by the Social Worker Licensing Board and will continue to ensure that the minimum required standards have been met.

None of these changes substantively change the processes so there is no fiscal impact.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):

The proposed changes are not expected to have any fiscal impact on non-small businesses' revenues or expenditures.

This rule has been amended to provide technical, conforming, and stylistic changes in accordance with the Rulewriting Manual for Utah and current industry standards as approved by the Social Worker Licensing Board and will continue to ensure that the minimum required standards have been met.

None of these changes substantively change the processes so there is no fiscal impact.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

The proposed changes are not expected to have any fiscal impact on affected persons.

This rule has been amended to provide technical, conforming, and stylistic changes in accordance with the Rulewriting Manual for Utah and current industry standards as approved by the Social Worker Licensing Board and will continue to ensure that the minimum required standards have been met.

None of these changes substantively change the processes for affected persons, so there is no fiscal impact.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):

The proposed changes are not expected to have any fiscal impact on affected persons.

This rule has been amended to provide technical, conforming, and stylistic changes in accordance with the Rulewriting Manual for Utah and current industry standards as approved by the Social Worker Licensing Board and will continue to ensure that the minimum required standards have been met.

None of these changes substantively change the processes for affected persons, so there is no fiscal impact.

G) Regulatory Impact Summary Table (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 will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$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

H) Department head comments on fiscal impact and approval of regulatory impact analysis:

The Executive Director of the Department of Commerce, Margaret W. Busse, has reviewed and approved this fiscal analysis.

The Division proposes these amendments in response to the statutory changes made by H.B. 250 (2023). Because Rule R156-60 is being repealed, these proposed amendments reenact the provisions as they apply to social workers, make nonsubstantive formatting changes to streamline and to update this rule, clarify and update definitions and comply with the Rulewriting Manual for Utah.

Small Businesses (less than 50 employees):

The Division does not expect any foreseeable impact on small businesses in the practice of social work in the state of Utah. The proposed amendments are to conform to the

requirements of H.B. 250 (2023). The changes are to amend this rule due to the repeal of Rule R156-60, update this rule to encompass current statutory requirements and practices in the profession.

Further, the Division does not foresee any negative impact on small businesses since grammatical and formatting amendments are made to make this rule comport to the Rulewriting Manual for Utah.

Non-Small Businesses (50 or more employees):

The Division finds that the non-small businesses in the social work industry in the state of Utah will not suffer a negative fiscal impact from the proposed rule amendments.

However, these amendments will have no expected fiscal impact for non-small businesses in Utah for the same rationale as described above for small businesses.

Further, any of these costs are either inestimable, for the reasons stated above, or there is no fiscal impact.

Citation Information

6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:

Section 58-60-201	Subsection 58-1-106(1)(a)	Subsection 58-1-202(1)(a)
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Incorporations by Reference Information

7. Incorporations by Reference:

A) This rule adds, updates, or removes the following title of materials incorporated by references:

Official Title of Materials Incorporated (from title page)	Model Standards of Practice for Child Custody Evaluation
Publisher	Association of Family and Conciliation Courts (AFCC)
Issue Date	May 2006

B) This rule adds, updates, or removes the following title of materials incorporated by references:

Official Title of Materials Incorporated (from title page)	NASW (National Association of Social Workers), ASWB (Association of Social Worker Boards), CSWE (Council on Social Work Education) and CSWA (Clinical Social Work Association) Standards for Technology in Social Work Practice
Publisher	National Association of Social Workers (NASW)
Issue Date	2017

Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:		01/17/2024
B) A public hearing (optional) will be held:		
Date:	Time:	Place (physical address or URL):
01/16/2024	9:00 AM	See information in Box 4 above.

9. This rule change MAY become effective on: 01/24/2024

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

Agency Authorization Information

Agency head or designee and title:	Mark B. Steinagel, Division Director	Date:	11/20/2023
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R156. Commerce, Professional Licensing.**R156-60a. Social Worker Licensing Act Rule.****R156-60a-101. Title - Authority - Organization and Relationship to Rule R156-1.**

(1) This rule is known as the "Social Worker Licensing Act Rule."

(2) This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 60, Part 2, Social Worker Licensing Act.

(3) The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-107.

R156-60a-102. Definitions.

~~[The following definitions supplement the statutory definitions.]~~ Terms used in this rule are defined in Title 58, Chapter 1, Division of Professional Licensing Act, and Title 58, Chapter 60, Part 2, Social Worker Licensing Act. In addition:

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

(a) Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition: DSM-5-TR published by the American Psychiatric Association;

(b) International Classification of Diseases, Tenth Revision, Clinical Modification (ICD-10-CM) for Physicians, Professional Edition published by the American Medical Association; or

(c) International Classification of Diseases, Tenth Revision, Clinical Modification (ICD-10-CM): The Complete Official Draft Code Set published by the American Medical Association.

(2) "APRN" as used in Subsection R156-60a-305(1)(a)(i) means an advanced practice registered nurse who meets the requirements of Subsection 58-31b-302(5)(g) to practice within the psychiatric mental health nursing specialty.

([4]3) "ASWB" means the Association of Social Work Boards.

(4) "Client" or "patient" means an individual who, if competent requests, or if not competent to request is lawfully provided professional services by a mental health therapist when the mental health therapist:

(a) agrees verbally or in writing to provide professional services to that individual; or

(b) without an overt agreement does in fact provide professional services to that individual.

(5) "Clinical mental health therapy," as used in Subsections R156-60a-302c(1)(a) and (b), means the practice area of social work which focuses on the assessment, diagnosis, treatment, and prevention of mental disorder, emotional, and other behavioral disturbances using individual, group, and family therapy modalities.

([4]6) "Clinical social work concentration and practicum," ~~["clinical concentration and practicum,"]~~ "case[-]work," "group work," or "family treatment course sequence with a clinical practicum," ~~["clinical practicum," or "practicum,"]~~ as used in Subsections 58-60-205(1)(c)(ii), (1)(f), and (2)(c)(ii), means a track of professional education that is specifically established to prepare an individual to practice or engage in mental health therapy.

(7) "Clinical social work experience," as used in Section R156-60a-302c includes clinical mental health therapy hours obtained direct with clients and:

(a) conducting, with documentation, an intake interview, mental status evaluation, biopsychosocial history, mental health history, or assessment for treatment planning and caseload management;

(b) obtaining knowledge related to techniques and interventions for the prevention and treatment of a broad range of mental health issues;

(c) strategies for interfacing with the legal system regarding court-referred clients;

(d) strategies for interfacing with integrated behavioral health care professionals; and

(e) strategies to advocate for persons with mental health issues.

([2]8) "CSW" means a licensed certified social worker.[

(3) "CSWT" or "clinical social worker intern" means an individual who has been issued a temporary externship license under Section 58-60-117.]

(9) "Direct supervision" of an individual in training, as used in Subsection 58-60-205(1)(e) means the supervisor meets with the supervisee:

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

(b) remotely via synchronous electronic methods that allow for visual and audio interaction between the supervisor and supervisee, in accordance with the requirements of their supervision contract.

(10) "Employee" means a W-2 employee as defined by the Internal Revenue Service.

(11) "General supervision" as used in Subsection 58-60-202(2)(a) means that the supervisor is available for consultation with the supervisee by personal face-to-face contact, or direct voice contact by telephone, radio, or other electronic means within a reasonable time consistent with the acts and practices in which the supervisee is engaged.

([5]12) "Human growth and development," as used in Subsection 58-60-205([4]3)(c)(iii)(A)(II), means a course completed after July 1, 2024 from a Council for Social Work Education (CSWE)

~~[at an]~~ accredited bachelors of social work program if the course qualifies for a degree in social work, ~~[college or university]~~ that includes an emphasis on human growth and development across the lifespan, from conception to death.

(13) "Independent of control" as used in Subsections R156-60a-305b(4)(c) and (5)(c), means not being employed by the supervisee, or by an agency owned in total or in part by the supervisee, or in which the supervisee has any controlling interest.

(14) "Intermediate treatment" as used in Subsection R156-60a-302c(2)(c), means short-term intensive clinical mental health therapy provided to individuals at an institution designed to provide accommodation, board, and nursing care for a temporary period to three or more individuals, who primarily have a mental illness.

(15) "LCSW" means a licensed clinical social worker.

(16) "Long-term treatment" as used in Subsection R156-60a-302c(2)(d), means clinical mental health therapy provided to individuals at a nursing home, residential care home, group home, or other facility or institution that provides extended health care to a patient.

(17) "On-the-job training program" as used in Subsection 58-1-307(1)(c), means a program that:

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

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

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

(d) is completed while the individual is an employee of a public or private mental health agency, in-patient or out-patient hospital, educational institution, or government agency, and is providing clinical mental health services; and

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

(18) "Social welfare policy," as used in Subsection 58-60-205(4)(c)(iii)(A)(I), means a course completed after July 1, 2024 from a CSWE accredited bachelors of social work program if the course qualifies for a degree in social work, ~~[at an accredited college or university]~~ that includes emphasis on the following:

(a) local, state, and federal social policy and how it impacts individuals, families, and communities; and

(b) the diverse needs of social welfare recipients.

(19) "Social work practice methods," as used in Subsection 58-60-205(4)(c)(iii)(A)(III), means a course completed after July 1, 2024 from a CSWE accredited bachelors of social work program if the course qualifies for a degree in social work, ~~[at a program accredited by the Council for Social Work Education as defined in Subsection 58-60-202(5)]~~ that includes emphasis on the following:

(a) generalist social work practice at the individual, family, group, organization, and community levels;

(b) planned client change process and social work roles at various levels;

(c) application of key values and principles of the National Association of Social Workers (NASW) Code of Ethics and resolution of ethical dilemmas; and

(d) evaluation of programs and direct practice in the social work field.

(20) "SSW" means a licensed social service worker.

(21) "Supervision contract" means a written, signed contract between a supervisor and a supervised individual to facilitate the completion of the supervised clinical training requirements for licensure and includes the provisions required by Subsection R156-60a-305b(3).

(22) "Supervised practice of mental health therapy~~[by a clinical social worker]~~" as used in Subsection 58-60-202(4)(a), means that the CSW is under the direct and general supervision of ~~[an LCSW]~~ a license holder meeting the requirements of ~~[Section R156-60a-302e]~~ Subsection 58-60-205(1)(d)(i).

(23) "Supervisor Association Verification form" means the form provided by the Division to document who is providing supervision to a supervised individual, which at a minimum includes:

(a) the name and license number of the supervised individual;

(b) the name and license number of the supervisor; and

(c) the supervised individual's place of employment.

R156-60a-302a. Qualifications for Licensure as an SSW - Education Requirements.

Under Subsection 58-60-205(4)(c)(ii), a master's degree qualifying an applicant for licensure as an SSW shall be in ~~[a]~~ the field of social work, psychology, marriage and family therapy, or mental health counseling.

R156-60a-302b. Qualifications for Licensure as an SSW - Supervised Qualifying Experience Requirements.

Under Subsection 58-60-205(4)(c)(iii)(B), the 2,000 hours of supervised qualifying experience for licensure as an SSW shall be performed:

(1) ~~[performed]~~ as a W-2 employee of an agency providing social work services and activities;

(2) ~~[performed]~~ according to a written social work job description approved by the licensed mental health therapist supervisor; and

(3) ~~[completed]~~ in not less than one year.

R156-60a-302c. Qualifications for Licensure as an LCSW - ~~[Supervised Training]~~ Experience Requirements.

(1) Under Subsections 58-60-205(1)(d) and (e) ~~[and 58-60-202(4)]~~, the minimum 3,000 hours of clinical social work experience required shall include: ~~[training and minimum 1,000 hours of supervised training in mental health therapy qualifying an applicant for licensure as an LCSW shall:]~~

(a) 1,000 hours providing clinical mental health therapy directly to clients; and

(b) 75 hours of clinical mental health therapy performed under direct supervision per Subsection R156-60a-102(9).

(2) Clinical social work experience shall include the following:

(a) individual, family, and group therapy;

(b) crisis intervention;

(c) intermediate treatment; and

(d) long-term treatment.

(3) Supervised training shall be obtained:

(a) ~~[be obtained]~~ after completion of the education in Subsections 58-60-205(1)(c) and (4)(f), and may not include any clinical practicum hours ~~[obtained as part of the education program]~~;

(b) unless Subsection (2)(4) applies, ~~[be completed]~~ while the applicant is licensed as a CSW;

(c) ~~[be completed]~~ while the applicant is a W-2 employee providing clinical mental health services at one of the following

~~facilities;[of a public or private agency, educational institution, or hospital engaged in clinical mental health therapy;]~~

- ~~(i) mental health agency;~~
- ~~(ii) in-patient or out-patient hospital;~~
- ~~(iii) educational institution;~~
- ~~(iv) non-profit organization; or~~
- ~~(v) government agency;~~

~~(d)[(i) be completed] in accordance with the supervised training requirements of Section R156-60-[302]305b;[and~~

~~(ii) as required by Subsection 58-60-205(1)(e), at least 100 hours of the mental health therapy training shall be under direct supervision as defined in Subsection R156-60-102(4);]~~

~~(e) [be completed] under [the supervision of] a supervisor who meets the requirements of Subsection 58-60-205(1)[(e)d(ii) and Section [R156-60-302e]R156-60a-305a; and~~

~~(f) in not less than 18 months.[include the following training requirements:~~

- ~~(i) individual, family, and group therapy;~~
- ~~(ii) crisis intervention;~~
- ~~(iii) intermediate treatment; and~~
- ~~(iv) long term treatment.]~~

~~(2)4 Notwithstanding Subsection (3)(c), an individual may qualify for clinical mental health licensure when:~~

~~(a) exempt [An applicant may apply for an LCSW license without complying with this Subsection (1)(e) if the applicant:~~

~~(a) qualifies for a license exemption]under Subsection 58-1-307(1)(a); or~~

~~(b) they completed training in another jurisdiction while:~~

- ~~(i) licensed as the equivalent of a CSW; or~~
- ~~(ii) engaged in the legal practice of certified social work while not required to be licensed.~~

~~(3)5 The exemption in Subsection 58-1-307(1)(b) does not permit an applicant to engage in the required hours of clinical social work training or clinical mental health therapy training without first becoming licensed as a CSW.~~

R156-60a-302d. Qualifications for Licensure as an LCSW - Examination Requirements.

~~(1) Under Subsection 58-60-205(1)(g), [the examination requirements for licensure as an LCSW shall include passing the]the following examinations will meet this requirement:~~

- ~~(a) ASWB Clinical Licensing Exam[ination]; or~~
- ~~(b) [the]Clinical Social Workers Examination of the State of California.~~

~~(2) [Under Subsection 58-60-205(2)(d), the examination requirements for licensure as a CSW shall include passing the ASWB Masters, Advanced Generalist, or Clinical Examination.~~

~~(3) Under Subsection 58-60-205(4)(d), the examination requirements for licensure as an SSW shall include passing the ASWB Bachelors Examination.~~

~~(4) [An applicant requesting additional testing time [to complete an ASWB exam]under Subsection 58-60-205([5]4) shall complete an ASWB application for [special arrangements approved by the Division]non-standard testing arrangements.]~~

R156-60a-302e. Qualifications to be a CSW Training Supervisor.

~~Under Subsections 58-60-202(3)(e) and 58-60-205(1)(e) and (f), to supervise a CSW, the supervisor shall:~~

- ~~(1) be currently licensed in good standing;~~
- ~~(2) for at least two consecutive years before beginning supervised training, have been licensed in good standing and engaged in lawful active practice, including providing mental health therapy;~~

~~(3) supervise no more than six individuals who are lawfully engaged in training for the practice of mental health therapy, unless granted an exception in writing from the Division in collaboration with the Board; and~~

~~(4) comply with all duties and responsibilities uniformly established in Section R156-60-302.~~

R156-60a-302f. Qualifications for Licensure as a CSWI.

~~Under Section 58-60-117, an applicant for licensure as a CSWI shall:~~

~~(1) hold an earned master's degree from a Masters in Social Work program, as documented by a signed affidavit from the applicant's program director; and~~

~~(2) be scheduled for the ASWB Masters Examination, as documented by the ASWB.]~~

R156-60a-302e. Qualifications for Licensure as an LCSW - Suicide Prevention Course.

~~(1) Under Subsection 58-60-205(1)(d)(ii), the two hours suicide prevention course required to obtain licensure shall be:~~

~~(a) approved, sponsored, or conducted by one of the following:~~

- ~~(i) CSWE accredited college or university;~~
- ~~(ii) county, state, or federal agency;~~
- ~~(iii) professional association, or similar body, involved in clinical mental health therapy; or~~
- ~~(iv) mental health agency that provides clinical mental health services; and~~

~~(b) relevant to mental health therapy and suicide prevention, consistent with the laws of this state, and include one or more of the following components:~~

- ~~(i) suicide concepts an facts;~~
- ~~(ii) suicide risk assessment, crisis intervention, and first aid;~~
- ~~(iii) evidence-based intervention for suicide risk;~~
- ~~(iv) continuity of care and follow-up services for suicide risk; and~~
- ~~(v) therapeutic alliances for intervention in suicide risk; and~~

~~(c) completed in not less than 50-minute blocks of time in one of the following formats:~~

- ~~(i) classroom lecture and discussion;~~
- ~~(ii) workshops;~~
- ~~(iii) synchronous webinars;~~
- ~~(iv) asynchronous online self-pace modules;~~
- ~~(v) case study reviews; or~~
- ~~(vi) simulations; and~~
- ~~(d) completed within two years of application.~~

~~(2) The course provider shall provide certification of:~~

- ~~(a) course attendance;~~
- ~~(b) hours completed;~~
- ~~(c) name of provider; and~~
- ~~(d) date of completion.~~

~~(3) An applicant for licensure shall submit certification of course completion, within the preceding two years, to the Division as a prerequisite for licensure.~~

R156-60a-303. [Term, —Expiration,—]Renewal[—] and Reinstatement of License[—Application Procedures].

~~(1) Under Subsection 58-1-308(1), the renewal date for the two-year renewal cycle for all licenses under Title 58, Chapter 60,~~

NOTICES OF PROPOSED RULES

Part 2, Social Worker Licensing Act, is established in Subsection R156-1-308a(1).

(2) Renewal and reinstatement procedures shall be in accordance with Sections R156-1-308a through R156-1-308l, except as provided in Subsection (3).

(3) Under Subsection 58-1-308(5)(a)(ii)(B) and Section R156-1-308g, an applicant for reinstatement of licensure as an LCSW whose license has been expired ~~[between two years and] over five years~~, shall ~~upon the Division's request~~:

(a) ~~[upon request,] meet with the Board to evaluate the applicant's ability to safely and competently practice clinical social work [and mental health therapy]; and~~

(b) ~~complete one or more of the following [if recommended by the Board to ensure the applicant can safely and competently practice clinical social work and mental health therapy];~~

(i) establish a plan of supervision under an approved supervisor, which may include up to 3,000 hours of clinical social work and mental health therapy training as a CSW before qualifying for reinstatement of the LCSW license;

(ii) pass the ASWB Clinical Licensing Exam ~~[inaction]~~; or

(iii) complete up to 40 hours of continuing education in subjects determined by the Board.

R156-60a-304. Continuing Education.

~~[Under Sections 58-60-105 and 58-60-205.5, the continuing professional education requirements for a social worker licensed under Title 58, Chapter 60, Part 2, Social Worker Licensing Act, are established in Section R156-60-105.]~~

(1) Under Sections 58-60-105 and 58-60-205.5, the continuing education (CE) requirements for each two-year renewal cycle beginning on October 1 of each even-numbered year, for an individual licensed under Title 58, Chapter 60, Part 2, Social Worker Licensing Act, shall:

(a) be completed by an individual as follows:

(i) 20 hours for SSW;

(ii) 20 hours for CSW;

(iii) 40 hours for LCSW; and

(b) include:

(i) six hours of ethics of social work practice, law, or technology; and

(ii) two hours in suicide prevention, this course shall meet the requirements of Section R156-60a-302f.

(2) An individual who completes more than the required number of CE hours during a two-year renewal cycle may carry over excess hours to the next two-year renewal cycle, as follows:

(a) five hours for SSW;

(b) five hours for CSW; and

(c) ten hours for LCSW.

(3) CE shall be:

(a) approved, conducted, or under the sponsorship of one of the following:

(i) CSWE accredited college or university;

(ii) county, state, or federal agency;

(iii) professional association, or similar body, involved in clinical mental health therapy; or

(iv) mental health agency that provides clinical mental health services;

(b) completed in not less than 50-minute blocks of time in one of the following formats:

(i) college or university lecture and discussion up to a maximum of:

(A) three CE hours per semester hour; or

(B) 1.5 CE per quarter hour;

(ii) conference;

(iii) lecture or instruct up to a maximum of two times per course, up to a maximum of:

(A) five hours for SSW;

(B) five hours for CSW; and

(C) ten hours for LCSW;

(iii) seminar;

(iv) training session;

(v) synchronous distance learning course that is clearly documented as real-time and interactive;

(vi) asynchronous distance learning course that is not real-time and interactive, up to a maximum of:

(A) eight hours for SSW;

(B) eight hours for CSW; or

(C) 15 CE hours for an LCSW;

(vii) specialty certification; or

(viii) volunteer service on a board, committee, or in a leadership role in any state, national, or international organization for the development and improvement of the licensee's profession; one CE hour may be counted as a regular credit, ethics, law, or technology credit, up to a maximum of six CE hours during each two-year period;

(c) prepared and presented by individuals who are qualified by education, training, and experience to provide CE;

(d) relevant to the licensee's scope of practice; and

(e) verified by a certificate of course completion, which shall include:

(i) name of the attendee;

(ii) name of course provider;

(iii) name of instructor;

(iv) date of the course;

(v) title of the course;

(vi) number of CE hours;

(vii) course objectives; and

(viii) type of CE, for example, seminar, real-time interactive, distance learning, teaching.

(4) An individual shall maintain adequate documentation as proof of compliance with this section for a period of two years after the end of the renewal cycle for which the CE is due.

(5) An individual may not carry forward any CE hours received before a granted license, including professional upgrades.

(6) CE hours shall be decreased proportionately according to the date of licensure within the two-year renewal cycle.

(7) The Division may defer or waive CE requirements in accordance with Section R156-1-308d.

R156-60a-305a. Supervisor Eligibility Requirements.

(1) Under Subsections 58-60-202(3)(c) and 58-60-205(1)(d) and (e), to be eligible to supervise a CSW, the supervisor shall be:

(a) an active license holder in good standing, in one of the following classifications:

(i) APRN specializing in psychiatric mental health nursing;

(ii) clinical mental health counselor (CMHC);

(iii) LCSW;

(iv) marriage and family therapist;

(v) psychiatrist; or

(vi) psychologist;

(b) licensed for at least two years outlined in Subsection (1)(a) before providing supervision; and

(c) engaged in the lawful practice of providing clinical mental health therapy;

(2) A training supervisor shall comply with duties and responsibilities established in Section R156-60a-305a.

R156-60a-305b. Supervised Experience Requirements - Supervision Contract - Duties and Responsibilities of Supervisor and Supervisee.

Under Subsections 58-60-205(1)(c) and 58-60-205(3)(c)(iii)(B), the supervised experience qualifications for licensure required under Title 58, Chapter 60, Part 2, Social Worker Licensing Act, are established and clarified as follows:

(1) Before accruing supervised experience, an individual shall:

(a) enter into a written supervision contract with a supervisor, signed by both parties; and

(b) verify that the supervisor has received acknowledgment from the Division of receipt of the Supervisor Verification document.

(2) Before providing supervision, a supervisor shall:

(a) enter into a written supervision contract with a supervisee, signed by both parties;

(b) ensure that during the period of supervised experience the supervisee is a W-2 employee providing clinical mental health services at one of the following facilities:

(i) mental health agency;

(ii) in-patient or out-patient hospital;

(iii) educational institution;

(iv) non-profit organization; or

(v) government agency;

(c) submit to the Division:

(i) a complete Supervisor Verification form; and

(ii) certification that the supervision contract meets the requirements of Subsection (3);

(d) receive an acknowledgment from the Division verifying receipt of the Supervisor Verification form.

(3) A supervision contract shall include at least the following provisions:

(a) a plan to ensure the supervised individual has accessibility to the supervisor;

(b) a plan for meetings between the supervisor and supervisee, addressing:

(i) frequency;

(ii) duration;

(iii) objectives;

(iv) format, such as individual or small group; and

(v) location, such as face-to-face or remotely;

(c) a plan for documenting the ongoing supervision, including objective and measurable circumstances;

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

(e) remedies in the event of a breach of contract by either the supervisor or supervisee, including procedures for contract termination; and

(f) if any part of the supervision will be conducted remotely, plans for:

(i) how the supervisor and supervisee will meet via real-time electronic methods allowing visual or audio interaction, and protect the security of electronic, confidential data and information;

(ii) how the supervisor will comply with the supervisor's duties and responsibilities as established in rule;

(iii) how the supervisor will physically visit the location where the supervisee practices on at least a quarterly basis during the period of supervision, or at such lesser frequency as is approved in advance by the Division in collaboration with the Board; and

(iv) how notice will be provided to the supervisee's clients or patients and employer regarding the supervisee's use of remote supervision.

(4) A supervisor shall have the following duties and responsibilities:

(a) ensure that during the period of supervision:

(i) the supervisee is a W-2 employee providing clinical mental health services at one of the following facilities:

(A) mental health agency;

(B) in-patient or out-patient hospital;

(C) educational institution;

(D) non-profit organization; or

(E) government agency;

(ii) the supervisor and supervisee remain appropriately licensed; and

(iii) the supervisor supervises no more than six individuals who are lawfully engaged in gathering experience for the practice of clinical mental health therapy;

(b) comply with the terms of the supervision contract;

(c) maintain a relationship with the supervisee in that the supervisor is independent of control by the supervised individual, and which the ability of the supervisor to supervise and direct the practice of that individual is not compromised;

(d) be available to the supervisee for advice, consultation, and direction consistent with the standards and ethics of the profession and the requirements suggested by the total circumstances, including consideration of the supervisee's level of training, diagnosis of patients, and other factors known to the supervisor;

(e) periodically review the client records assigned to the supervisee;

(f) comply with the confidentiality requirements of Section 58-60-114;

(g) monitor the supervisee's performance for compliance with the laws, rules, standards, and ethics of the profession, and report violations to the Division; and

(h) upon completion of the supervised training, submit to the Division on Division-provided forms:

(i) documentation of the training hours completed by the supervisee; and

(ii) an evaluation of the supervised individual with respect to the quality of the work performed and the individual's competency to practice in the profession.

(5) A supervisee shall have the following duties and responsibilities:

(a) before beginning any supervised training:

(i) enter into a written supervision contract with the supervisor in accordance with Subsection (3); and

(ii) ensure the required Supervisor Verification form is received by the Division;

(b) maintain required licensure;

(c) maintain employment as a W-2 employee providing clinical mental health services at one of the following facilities:

(i) mental health agency;

(ii) in-patient or out-patient hospital;

(iii) educational institution;

(iv) non-profit organization; or

(v) government agency;

NOTICES OF PROPOSED RULES

(d) comply with the terms of the supervision contract;
(e) maintain a relationship with the supervisor that the supervisor is independent of the supervisee's control, and which the ability of the supervisor to supervise and direct the practice of the supervisee is not compromised;
(f) be professionally responsible for the acts and practices of the supervisee that are a part of the required supervised training;
(g) comply with the confidentiality requirements of Section 58-60-114; and
(h) comply with the applicable laws, rules, standards, and ethics of the profession.
(6) A supervisor shall notify the Division in writing of any of the following changes, within 30 days of the change:
(a) termination of a supervision contract; or
(b) a change in the supervisee's place of employment.
(7)(a) If a supervisor does not support the issuance of a license to a supervisee to practice unsupervised, or if the supervisor has other concerns regarding the supervisee that the supervisor believes requires input from the Division and Board, the supervisor shall submit to the Division a written explanation outlining the supervisor's concerns.
(b) Upon receipt of written concerns from a supervisor with respect to a supervisee, the Division:
(i) shall provide the supervisee an opportunity to respond in writing to the Division regarding the supervisor's concerns;
(ii) shall review the written statements from the supervisor and supervisee with the Board; and
(iii) in consultation with the Board, the supervisee may be required to obtain additional supervised hours, education, and training.

R156-60a-502. Unprofessional Conduct.

Under Subsection 58-60-110(2), "unprofessional conduct" includes:

[~~(1) using the abbreviated title of LCSW unless licensed as a Licensed Clinical Social Worker;~~
~~(2) using the abbreviated title of CSW unless licensed as a Certified Social Worker;~~
~~(3) using the abbreviated title of SSW unless licensed as a Social Service Worker;~~
~~(4) acting as a supervisor or accepting supervision of a supervisor without complying with or ensuring compliance with Sections R156-60-302, R156-60a-302e, and R156-60a-302e;~~
~~(5) engaging in the supervised practice of mental health therapy as a licensed CSW unless:~~
~~(a) the licensee has completed a clinical practicum as part of the Council on Social Work Education (CSWE) accredited master's degree program; and~~
~~(b) the scope of practice is within the licensee's competency, abilities and education;~~
~~(6) engaging in the supervised practice of mental health therapy while not in compliance with Sections R156-60a-302e and R156-60-302;~~
~~(7) engaging in or aiding or abetting conduct or practices that are dishonest, deceptive or fraudulent;~~
~~(8) engaging in or aiding or abetting deceptive or fraudulent billing practices;~~
~~(9) failing to establish and maintain professional boundaries with a client or former client;~~
~~(10) engaging in dual or multiple relationships with a client or former client in which there is a risk of or potential harm to the client;~~

~~(11) engaging in sexual activities or sexual contact with a client with or without client consent;~~
~~(12) engaging in sexual activities or sexual contact with a former client within two years of documented termination of services, even if there is no risk of exploitation or potential harm to the client;~~
~~(13) engaging in sexual activities or sexual contact with client's relative or other individual with whom the client maintains a personal relationship, if there is a risk of exploitation or potential harm to the client;~~
~~(14) embracing, massaging, cuddling, caressing, or performing any other act of physical contact with a client, if there is a risk of exploitation or potential harm to the client resulting from the contact;~~
~~(15) engaging in or aiding or abetting sexual harassment or any conduct that is exploitive or abusive with respect to a student, trainee, employee, or colleague with whom the licensee has supervisory or management responsibility;~~
~~(16) failing to exercise professional discretion and impartial judgment required for the performance of professional activities, duties and functions;~~
~~(17) failing to provide impartial, objective, and informed services, recommendations, or opinions with respect to custodial or parental rights, divorce, domestic relationships, adoptions, sanity, competency, mental health, or other determination concerning an individual's civil or legal rights;~~
~~(18) exploiting a client or former client for personal gain;~~
~~(19) exploiting a person who has a personal relationship with a client for personal gain;~~
~~(20) failing to maintain client records including records of assessment, treatment, progress notes and billing information for a period of not less than ten years from the documented termination of services to the client;~~
~~(21) failing to provide client records in a reasonable time upon written request of the client, or the client's legal guardian;~~
~~(22) failing to obtain informed consent from the client or the client's legal guardian before taping, recording, or permitting third party observations of client activities or records;~~
~~(23) failing to protect the confidences of persons named or identified in the client records; and~~
~~(24) failing to abide by the Code of Ethics of the National Association of Social Workers (NASW) as approved by the 1996 NASW Delegate Assembly and revised by the 2020 and 2021 NASW Delegate Assembly, which is incorporated by reference.]~~
~~(1) using the abbreviated title of:~~
~~(a) LCSW unless licensed as a Licensed Clinical Social Worker;~~
~~(b) CSW unless licensed as a Certified Social Worker;~~
~~(c) SSW unless licensed as a Social Service Worker;~~
~~(2) acting as a supervisor or accepting supervision from a supervisor without complying with or ensuring compliance with Sections R156-60a-305a and R156-60a-305b;~~
~~(3) directing one's mental health therapist supervisor to engage in a practice that would violate any statute, rule, or generally accepted professional or ethical standard of the supervisor's profession;~~
~~(4) engaging in the supervised practice of clinical mental health therapy:~~
~~(a) as a licensed CSW unless;~~
~~(i) the licensee has completed a clinical practicum as part of the CSWE accredited master's degree program; and~~

(ii) the scope of practice is within the licensee's competency, abilities, and education;

(b) while not in compliance with Section R156-60a-305b;

(5) engaging in or aiding or abetting;

(a) conduct or practices that are dishonest, deceptive, or fraudulent;

(b) deceptive or fraudulent billing practices;

(c) sexual harassment or any conduct that is exploitive or abusive with respect to a student, trainee, employee, or colleague with whom the licensee has supervisory or management responsibility;

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

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

(7) engaging in sexual activities or sexual contact at any point in time with a client, former client, or another individual with whom the client maintains a current, or has a past, close personal relationship with or without the client's consent;

(8) exploiting for personal gain a:

(a) client;

(b) former client; or

(c) person who has a personal relationship with a client;

(9) failing to:

(a) establish and maintain professional boundaries with a client or former client;

(b) exercise professional discretion and impartial judgment required for the performance of professional activities, duties, and functions;

(c) provide impartial, objective, and informed services, recommendations, or opinions with respect to:

(i) custodial or parental rights;

(ii) divorce;

(iii) domestic relationships;

(iv) adoptions;

(v) sanity;

(vi) competency;

(vii) mental health; or

(viii) other determination concerning an individual's civil or legal rights;

(d) maintain client records including records of assessment, treatment, progress notes, and billing information for a period of not less than ten years from the documented termination of services to the client;

(e) provide client records in a reasonable time upon written request of the client, or the client's legal guardian;

(f) obtain informed consent from the client or the client's legal guardian before taping, recording, or permitting third-party observations of client activities or records;

(g) protect the confidences of persons named or identified in the client records;

(h) abide by the Code of Ethics of the NASW as approved by the 1996 NASW Delegate Assembly and revised by the 2020 and 2021 NASW Delegate Assembly, which is incorporated by reference;

(i) abide by the NASW, ASWB, CSWE, and Clinical Social Work Association (CSWA) Standards for Technology in Social Work Practice as approved by the 2017 NASW Delegate Assembly, which is incorporated by reference;

(j) follow the Model Standards of Practice for Child Custody Evaluation of the Association of Family and Conciliation Courts (AFCC) May 2006, which is incorporated by reference;

(k) cooperate with the Division during an investigation; and

(l) obtain a thorough working knowledge of the Code of Ethics specifically related to a supervised individuals professional practice;

(10) if providing services remotely, failing to:

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

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

(c) appropriately store and dispose of electronic confidential data and information; and

(11) violating:

(a) Section R156-60a-305a regarding supervisor experience; or

(b) Section R156-60a-305b as a supervisor or supervised individual.

[R156-60a-601. Supervision – Scope of Practice – SSW.]

Under Subsections 58-60-202(2) and (6), supervision and scope of practice of an SSW is further defined as follows:

(1) general supervision of an SSW by a licensed mental health therapist is only required when mental health therapy services are provided; and

(2) the scope of practice of the SSW shall be in accordance with a written social work job description approved by the licensed mental health therapist supervisor, except that the SSW may not engage in the supervised or unsupervised practice of mental health therapy.]

KEY: licensing, social workers

Date of Last Change: [January 4, 2023]2024

Notice of Continuation: June 13, 2019

Authorizing, and Implemented or Interpreted Law: 58-60-201; 58-1-106(1)(a); 58-1-202(1)(a)

NOTICE OF PROPOSED RULE

TYPE OF FILING: Amendment

Rule or Section Number:	R156-60b	Filing ID: 56211
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Agency Information

1. Department:	Commerce	
Agency:	Professional Licensing	
Building:	Heber M. Wells Building	
Street address:	160 E 300 S	
City, state and zip:	Salt Lake City, UT 84111-2316	
Mailing address:	PO Box 146741	
City, state and zip:	Salt Lake City, UT 84114-6741	
Contact persons:		
Name:	Phone:	Email:
Jana Johansen	801-530-6628	janajohansen@utah.gov

Please address questions regarding information on this notice to the persons listed above.

General Information

2. Rule or section catchline:

R156-60b. Marriage and Family Therapist Licensing Act Rule

3. Purpose of the new rule or reason for the change:

The Division of Professional Licensing (Division) in collaboration with Marriage and Family Therapist Licensing Board makes this filing with the intent that the amendments being proposed incorporate changes due to H.B. 166 passed during the 2023 General Session, merge provisions found in Rule R156-60, the Mental Health Practice Act Rule, which is being recommended for repeal, and correct grammar and formatting errors.

4. Summary of the new rule or change:

Amendment to Section R156-60b-102 adds definitions from the Mental Health Practice Act Rule R156-60 (being repealed) which will provide clarity and continuity for readers. This section also includes grammar, citation, and formatting corrections.

Amendment to Section R156-60b-302b adds provisions regarding experience being repealed with the Mental Health Practice Act Rule. In addition, grammar, formatting, and citation corrections are proposed. Amendments in this section also reflect changes enacted with H.B. 166 (2023) as well.

Amendments to Section R156-60b-302d add sections of the Mental Health Practice Act Rule and clarifies what constitutes the required suicide prevention course, as well as incorporating provisions from the repealed Rule R156-60. Removal of the original section is also included as it is being incorporated into Section R156-60b-305a.

Amendments to Section R156-60b-303 correct grammar and clarifies requirements that the Board historically uses to determine reinstatement.

Amendments to Section R156-60b-304 add provisions regarding continuing education being repealed with the Mental Health Practice Act Rule.

Amendments to Section R156-60b-305a add provisions regarding supervisor eligibility being repealed with the Mental Health Practice Act Rule.

Amendments to Section R156-60b-305b add provisions regarding supervised experience, supervision contracts, and the duties and responsibilities of a supervisor and supervisee being repealed with the Mental Health Practice Act Rule.

Amendment to Section R156-60b-306 removes section that is incorporated into Section R156-60b-303.

Amendments to Section R156-60b-502 correct formatting, grammar, and citations.

(EDITOR'S NOTE: The proposed repeal of Rule R156-60 is under ID 56209 in this issue, December 15, 2023, of the Bulletin.)

Public Hearing Information:

There will be a public hearing on 01/16/2024 at 9:00 AM at the Heber Wells Building, 160 E 300 S, Conference Room 474, Salt Lake City, UT. Also available via Google Meet (see below).

Google Meeting link:

meet.google.com/yfq-psko-xgt

Or join by phone:

(US) +1 304-691-0096

PIN: 605869246

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:

A) State budget:

The proposed changes are not expected to have any fiscal impact on state government revenues or expenditures.

The requested changes reflect current industry standards as approved by the Marriage and Family Therapist Licensing Board and will continue to ensure that the minimum required standards have been met.

B) Local governments:

The proposed changes are not expected to have any fiscal impact on local governments' revenues or expenditures.

This rule has been amended to provide technical, conforming, and stylistic changes in accordance with the Rulewriting Manual for Utah and current industry standards as approved by the Marriage and Family Therapist Licensing Board and will continue to ensure that the minimum required standards have been met.

None of these changes substantively change the processes so there is no fiscal impact.

C) Small businesses ("small business" means a business employing 1-49 persons):

The proposed changes are not expected to have any fiscal impact on small businesses' revenues or expenditures.

This rule has been amended to provide technical, conforming, and stylistic changes in accordance with the Rulewriting Manual for Utah and current industry standards as approved by the Marriage and Family Therapist Licensing Board and will continue to ensure that the minimum required standards have been met.

None of these changes substantively change the processes so there is no fiscal impact.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):

The proposed changes are not expected to have any fiscal impact on non-small businesses' revenues or expenditures. This rule has been amended to provide technical, conforming, and stylistic changes in accordance with the Rulewriting Manual for Utah and current industry standards as approved by the Marriage and Family Therapist Licensing Board and will continue to ensure that the minimum required standards have been met.

None of these changes substantively change the processes so there is no fiscal impact.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

The proposed changes are not expected to have any fiscal impact on affected persons.

This rule has been amended to provide technical, conforming, and stylistic changes in accordance with the Rulewriting Manual for Utah and current industry standards as approved by the Marriage and Family Therapist Licensing Board and will continue to ensure that the minimum required standards have been met.

None of these changes substantively change the processes for affected persons, so there is no fiscal impact.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):

As described above in Box 5(E) for other persons, the proposed changes are not expected to have any compliance costs for affected persons.

G) Regulatory Impact Summary Table (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 will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0

Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$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

H) Department head comments on fiscal impact and approval of regulatory impact analysis:

The Executive Director of the Department of Commerce, Margaret W. Busse, has reviewed and approved this fiscal analysis.

The Division in collaboration with the Marriage and Family Therapist Licensing Board proposes these amendments in response to the statutory changes made in H.B. 166 (2023). Because Rule R156-60 is being repealed, these proposed amendments add the provisions to this rule as they apply to marriage and family therapists, make nonsubstantive grammar and formatting changes to streamline and update this rule, and comply with the Rulewriting Manual for Utah.

Small Businesses (less than 50 employees):

The Division does not expect any foreseeable impact on small businesses in the practice of marriage and family therapy industry in the state of Utah. The proposed amendments are to conform to the requirements of H.B. 166 (2023). The changes are to move the provisions of Rule R156-60, due to the repeal of Rule R156-60, to update this rule to encompass current statutory requirements and practices in the profession.

Further, the Division does not foresee any negative impact on small businesses since grammatical and formatting amendments are made to make this rule comport to the Rulewriting Manual for Utah.

Non-Small Businesses (50 or more employees):

The Division finds that the non-small businesses in the marriage and family therapy industry in the state of Utah

will not suffer a negative fiscal impact from the proposed rule amendments.

However, these amendments will have no expected fiscal impact for non-small businesses in Utah for the same rationale as described above for small businesses.

Further, any of these costs are either inestimable, for the reasons stated above, or there is no fiscal impact.

Citation Information

6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:

Subsection 58-1-106(1)(a)	Subsection 58-1-202(1)(a)	Section 58-60-301
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Incorporations by Reference Information

7. Incorporations by Reference:

A) This rule adds, updates, or removes the following title of materials incorporated by references:

Official Title of Materials Incorporated (from title page)	Model Standards of Practice for Child Custody Evaluation
Publisher	Association of Family and Conciliation Courts (AFCC)
Issue Date	May 2006

Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:		01/17/2024
B) A public hearing (optional) will be held:		
Date:	Time:	Place (physical address or URL):
01/16/2024	9:00 AM	See information in Box 4 above.

9. This rule change MAY become effective on:	01/24/2024
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.	

Agency Authorization Information

Agency head or designee and title:	Mark B. Steinagel, Division Director	Date:	11/20/2023
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R156. Commerce, Professional Licensing.

R156-60b. Marriage and Family Therapist Licensing Act Rule. R156-60b-102. Definitions.

~~[The following definitions supplement the definitions]~~ Terms used in this rule are defined in Title 58, Chapter 1, Division of Professional Licensing Act, and Title 58, Chapter 60, Mental Health Professional Practice Act. In addition:

(1) "AAMFT" means the American Association for Marriage and Family Therapy.

(2) "AMFT" means an associate marriage and family therapist.

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

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

(b) International Classification of Diseases, Tenth Revision, Clinical Modification (ICD-10-CM) for Physicians, Professional Edition published by the American Medical Association; or

(c) International Classification of Diseases, Tenth Revision, Clinical Modification (ICD-10-CM): The Complete Official Draft Code Set published by the American Medical Association.

(4) "APRN" as used in Subsection R156-60b-305a(1)(a)(i) means an advanced practice registered nurse who meets the requirements of Subsection 58-31b-302(5)(g) to practice within the psychiatric mental health nursing specialty.

(5) "Client" or "patient" means an individual who, if competent requests, or if not competent to request is lawfully provided professional services by a mental health therapist when the mental health therapist:

(a) agrees verbally or in writing to provide professional services to that individual; or

(b) without an overt agreement does in fact provide professional services to that individual.

(2)[6] "Deficiency" as used in Subsection 58-60-117(1)(d), means the educational degree upon which licensure to be based fails to include no more than a combined total of six semester or eight quarter hours in coursework listed in one or more of Subsections R156-60b-302a(2)(a) through (g).

(3)[7] "Direct personal supervision" ~~[is the same as defined under Subsection R156-60-102(4)]~~ of a supervised individual in training, as used in Subsection 58-60-305(1)(e) means the supervisor meets with the supervisee:

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

(b) remotely via synchronous electronic methods that allow for visual and audio interaction between the supervisor and supervisee, in accordance with the requirements of their supervision contract.

([4]8) "Directly related to marriage and family therapy" as used in Section R156-60b-304 and Subsection R156-~~60-105(1)(e)]~~60b-304(1)(a), means that the continuing education course:

(a) ~~[is approved by]~~ has the approval of an international, national, or state marriage and family therapy association, national or state marriage and family therapy regulatory board, or a Commission on Accreditation for Marriage and Family Therapy Education accredited program; or

(b) title, objective, or official description of the course indicates instruction on relationships, couples, or families.

(9) "Employee" means a W-2 employee as defined by the Internal Revenue Service.

(10) "Independent of control" as used in Subsections R156-60b-305(4)(c) and (5)(e), means not being employed by the supervisee, or by an agency owned in total or in part by the supervisee, or that the supervisee has any controlling interest.

(11) "Marriage and family therapy experience" as used in Subsection R156-60b-302b(1) includes clinical mental health therapy hours obtained direct with clients and:

(a) conducting, with documentation, an intake interview, mental status evaluation, biopsychosocial history, mental health history, or assessment for treatment planning caseload management;

(b) obtaining knowledge related to techniques and interventions for the prevention and treatment of a broad range of mental health issues;

(c) strategies for interfacing with the legal system regarding court-referred clients;

(d) strategies for interfacing with integrated behavioral health care professionals; and

(e) strategies to advocate for persons with mental health issues.

(12) "Marriage and family therapy" as used in Subsections R156-60b-302b(1)(a) and (b), means the practice area of marriage and family therapy, which focuses on the assessment, diagnosis, treatment, and prevention of mental disorder, emotional, and other behavioral disturbances using individual, couple, group, and family therapy modalities.

(13) "MFT" means a marriage and family therapist.

(14) "On-the-job training program" as used in Subsection 58-1-307(1)(c), means a program that:

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

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

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

(d) the individual is an employee of a public or private mental health agency, in-patient or out-patient hospital, educational institution, or government agency, and is providing clinical mental health services; and

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

(15) "Practicum" as used in Subsection R156-60b-302a(2)(g), means a clinical program of training at an accredited school in a setting other than a student's supervised private practice.

(16) "Supervision contract" means a written, signed contract between a supervisor and an individual being supervised to facilitate the completion of experience requirements for licensure and includes the provisions required by Subsection R156-60b-305b(3).

(17) "Supervisor Verification form" means the form, provided by the Division, to document who is providing supervision to a supervised individual, which at a minimum includes:

(a) name and license number of the individual;

(b) name and license number of the supervisor; and

(c) supervised individuals place of employment.

(18) "Unprofessional conduct" is further defined, under Subsection 58-1-203(1)(e), in Section R156-60b-502.

R156-60b-302a. Qualifications for Licensure - Education Requirements.

(1) Under Subsection 58-60-305(1)(c), an applicant applying for licensure as a marriage and family therapist shall produce certified transcripts evidencing completion of:

(a) a clinical master's or doctorate degree in marriage and family therapy, from a program accredited by the Commission on Accreditation for Marriage and Family Therapy Education ~~[at the time]~~when the applicant obtained the education; or

(b) a clinical master's degree in marriage and family therapy or equivalent, from an institution accredited by a professional accrediting body approved by the Council for Higher Education Accreditation of the American Council on Education ~~[at the time]~~when the applicant obtained the education.

(2) Certified transcripts evidencing completion of a degree under Subsection (1)(b) shall include the following:

(a) six semester hours or nine quarter hours of course work in theoretical foundations of marital and family therapy;

(b) nine semester hours or 12 quarter hours of course work in assessment and treatment in marriage and family therapy, including Diagnostic Statistical Manual;

(c) six semester hours or nine quarter hours of course work in human development and family studies that include ethnic minority issues, and gender issues including sexuality, sexual functioning, and sexual identity;

(d) three semester hours or four quarter hours in professional ethics;

(e) three semester hours or four quarter hours in research methodology and data analysis;

(f) three semester hours or four quarter hours in electives in marriage and family therapy; and

(g) a clinical practicum under supervision, as defined in Section 58-60-305a, ~~[that]~~which includes at least 400 hours as follows:

(i) 100 hours of direct supervision; and

(ii) 300 hours of mental health therapy under direct supervised clinical practice, with at least 150 hours in couple or family therapy with two or more clients participating.

R156-60b-302b. Qualifications for Licensure - ~~[Supervised Training]~~Experience Requirements.

(1) Under Subsection[s] 58-60-305(1)(d) ~~[and 58-60-305(1)(e) and Section R156-60-302, an applicant shall have completed a]~~the minimum ~~[of]~~3,000 hours of supervised marriage and family therapy~~[training as follows]~~ experience required to obtain marriage and family therapist licensure shall include:

(a) 1,000 hours providing marriage and family therapy as defined in Subsection 58-60-305(1)(e) with a minimum of 500 of those hours including two or more clients participating; and

(b) 75 hours of marriage and family therapy performed continually and uniformly under direct personal supervision per Subsection R156-60b-102(7).

(2) Marriage and family therapy experience shall include:

(a) individual, couple, family, and group therapy;

(b) crisis intervention;

(c) mediating relationships; and

(d) breaking dysfunction cycles.

(3) Supervised experience shall be obtained:

(a) while the individual is a licensed associate marriage and family therapist or as a doctoral program student who is not paid as a 1 099 independent contractor;

~~([a]b)~~ while the applicant is a W-2 employee providing clinical~~[engaged in]~~ mental health therapy~~[as]~~ at one of the following facilities:

- ~~(i) mental health agency;~~
- ~~(ii) in-patient or out-patient hospital;~~
- ~~(iii) educational institution;~~
- ~~(iv) non-profit organization; or~~
- ~~(v) government agency;~~
- ~~(c) in accordance with the supervision experience requirements of Section R156-60b-305b;~~
- ~~(d) under a supervisor who meets the requirements of Section R156-60b-305a; and~~
- ~~(c) in not less than 18 months.~~
- ~~(4) Training and experience completed in group therapy sessions shall only be counted if the applicant functioned as the primary therapist or co-therapist.~~

~~(5) Notwithstanding Subsection (3)(b), an individual may qualify for licensure when:~~

- ~~(a) exempt under Subsection 58-1-307(1)(a);~~
- ~~(b) they completed training in another jurisdiction while:~~
 - ~~(i) licensed as the equivalent of an AMFT; or~~
 - ~~(ii) engaged in the legal practice of marriage and family therapy while not required to be licensed; and~~
- ~~(c) provides satisfactory evidence to the Division and Board documenting training is equivalent to and meets the experience requirements under this section and Subsections 58-60-305(1)(d) and (e).~~

~~(5) The exemption in Subsection 58-1-307(1)(b) does not permit an applicant to engage in the required hours of marriage and family therapy training and experience without first becoming licensed as an AMFT.~~

- ~~[(i) a W-2 employee of a public or private agency; or~~
- ~~(ii) a doctorate program student who is not paid as a 1099 independent contractor;~~

~~(b) under supervision that complies with Sections 58-60-307, R156-60-302, and R156-60b-302d;~~

~~(c) under Subsections 58-60-305(1)(d) and 58-60-305(1)(e), include a minimum of 1,000 hours of supervised training in mental health therapy, with at least 500 hours in couple or family therapy with two or more clients participating;~~

~~(d) count training hours completed in a group therapy session only if the applicant functioned as the primary therapist or co-therapist; and~~

~~(e) 100 hours of direct supervision, spread uniformly and continually throughout supervised training.~~

~~(2) An applicant for licensure as a marriage and family therapist, who is not seeking licensure by endorsement based upon licensure in another jurisdiction, and who has completed in whole or in part the marriage and family therapy training requirements outside the state, may receive credit for that training if the applicant demonstrates, by evidence satisfactory to the Division and Board, that the training is equivalent to and meets the requirements for training under this section and Subsections 58-60-305(1)(d) and 58-60-305(1)(e).]~~

R156-60b-302d. Qualifications for Licensure - Suicide Prevention Course.

~~(1) Under Subsection 58-60-305(1)(d)(iii), the two-hour suicide prevention course required to obtain marriage and family therapist licensure shall be:~~

- ~~(a) approved, sponsored, or conducted by one of the following:~~

- ~~(i) accredited college or university;~~
- ~~(ii) county, state, or federal agency;~~
- ~~(iii) professional association, or similar body, involved in clinical mental health therapy; or~~
- ~~(iv) mental health agency that provides clinical mental health services;~~

~~(b) relevant to mental health therapy and suicide prevention, consistent with the laws of this state, and include one or more of the following components:~~

- ~~(i) suicide concepts and facts;~~
- ~~(ii) suicide risk assessment, crisis intervention, and first aid;~~
- ~~(iii) evidence-based intervention for suicide risk;~~
- ~~(iv) continuity of care and follow-up services for suicide risk; and~~
- ~~(v) therapeutic alliances for intervention in suicide risk;~~

~~(c) completed in not less than 50-minute blocks of time in one of the following formats:~~

- ~~(i) classroom lecture and discussion;~~
- ~~(ii) workshops;~~
- ~~(iii) synchronous webinars;~~
- ~~(iv) asynchronous online self-paced modules;~~
- ~~(v) case study reviews; or~~
- ~~(vi) simulations; and~~
- ~~(d) completed within two years of application.~~
- ~~(2) The course provider shall provide certification of:~~
 - ~~(a) course attendance;~~
 - ~~(b) hours completed;~~
 - ~~(c) name of provider; and~~
 - ~~(d) date of completion.~~

~~(3) An applicant for licensure shall submit certification of course completion, within the preceding two years, to the Division as a prerequisite for licensure.~~

[R156-60b-302d. Qualifications to be a Marriage and Family Therapist Training Supervisor:

~~Under Subsection 58-60-307(1), to be qualified as a marriage and family therapist training supervisor under Subsections 58-60-305(1)(d) and (e) and Section R156-60-302, an individual shall:~~

- ~~(1) have been licensed in good standing as a marriage and family therapist, clinical mental health counselor, psychiatrist, psychologist, registered psychiatric mental health nurse practitioner, or clinical social worker for at least two consecutive years prior to beginning supervised training;~~
- ~~(2) be currently licensed in good standing in the state that the training is being performed;~~

~~(3)(a) be currently approved by AAMFT as a marriage and family therapist supervisor;~~

~~(b) have successfully completed a supervision course in a Commission on Accreditation for Marriage and Family Therapy Education accredited marriage and family therapy program at an accredited university; or~~

~~(c) have successfully completed 20 clock hours of instruction sponsored by AAMFT or the Utah Association for Marriage and Family Therapy as follows:~~

- ~~(i) four hours of review of models of marriage and family therapy and supervision;~~
- ~~(ii) eight hours of marriage and family therapy supervision processes and practices;~~
- ~~(iii) four hours of research on effective outcomes and processes of supervision; and~~

~~(iv) four hours of AAMFT Code of Ethics, state rules, and case studies related to marriage and family therapy supervision;~~
~~(4)(a) enter into a written supervision contract with the supervisee under Section R156-60-302; and~~
~~(b) comply with each of the duties and responsibilities uniformly established in Section R156-60-302; and~~
~~(5) for a supervisor meeting criteria in Subsection (3)(b) or (3)(c), in each two-year renewal cycle, complete four hours of the required 40 hours of continuing professional education in topics directly related to marriage and family therapy supervisor training.]~~

R156-60b-303. Renewal [~~Cycle—Procedures~~]and Reinstatement of License.

(1) Under Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to all licenses under Title 58, Chapter 60, Part 3, Marriage and Family Therapist Licensing Act [~~Mental Health Professional Practice Act~~], is established in ~~S[ub]section R156-1-308a[(4)].~~

(2) Marriage and family therapist renewal [~~Renewal~~] and reinstatement procedures shall be in accordance with Sections R156-1-308[b]a through R156-1-308l [~~and R156-60b-306~~] except as provided in Subsection R156-60b-303(3).

(3) Under Subsection 58-1-308(6)(a) and Section R156-1-308g, an applicant for reinstatement of licensure as a marriage and family therapist whose license has been expired over five years, shall upon request:

(a) meet with the Board to evaluate the applicant's ability to safely and competently practice as a marriage and family therapist; and

(b) if recommended by the Board, complete one or more of the following:

(i) establish a plan of supervision under an approved supervisor, which may include up to 3,000 hours of marriage and family therapist experience and training as an AMFT before qualifying for reinstatement of the MFT license;

(ii) retake and pass the Marital and Family Therapy National Examination administered by the American Association of Marriage and Family Therapy Regulatory Boards; or

(iii) complete up to 40 hours of continuing education in subjects determined by the Board.

R156-60b-304. Continuing Education.

(1) Under Section 58-60-105, the continuing [~~professional~~] education (CE) requirements for each two-year renewal cycle beginning October 1 of each even-numbered year, for a marriage and family therapist licensed under Title 58, Chapter 60, Part 3, Marriage and Family Therapist Licensing Act, [~~are in Section R156-60-105.~~] shall be 40 hours and include:

(a) six hours in ethics of clinical practice, law, or technology with a minimum three of the hours directly related to marriage and family therapy; and

(b) two hours in suicide prevention, this course shall meet the requirements of Section R156-60b-302d.

(2) At least 15 of the required 40 CE hours must be directly related to the practice of marriage and family therapy.

(3) An individual who completes more than the required number of CE hours during a two-year renewal cycle may carry over up to ten hours of excess to the next two-year renewal cycle.

(4) CE shall be:

(a) approved, conducted, or under the sponsorship of one of the following:

(i) accredited college or university;

(ii) county, state, or federal agency;

(iii) professional association, or similar body, involved in clinical mental health therapy; or

(iv) mental health agency that provides clinical mental health services;

(b) completed in not less than 50-minute blocks of time in one of the following formats:

(i) college or university lecture and discussion up to a maximum of:

(A) three CE hours per semester hour; or

(B) 1.5 CE hours per quarter hour;

(ii) conference;

(iii) lecture or instruction up to a maximum of two times per course, up to a maximum of 14 CE hours for an MFT;

(iv) seminar;

(v) training session;

(vi) synchronous distance learning course that is clearly documented as real-time and interactive;

(vii) asynchronous distance learning course that is not real-time and interactive, up to a maximum of 15 CE hours for an MFT;

(viii) specialty certification;

(ix) certifiable clinical readings, up to a maximum of 15 hours;

(x) direct supervision of an ACMHC, CSW, or AMFT completing the experience requirements for licensure, up to a maximum of 14 hours for an MFT; and

(xi) volunteer service on a board, committee, or in a leadership role in any state, national, or international organization for the development and improvement of the licensee's profession; one CE hour may be counted as a regular credit, ethics of clinical practice, law, or technology credit, up to a maximum of six CE hours during each two-year period;

(c) prepared and presented by individuals who are qualified by education, training, and experience to provide CE;

(d) relevant to the licensee's scope of practice; and

(e) verified by a certificate of course completion that shall include:

(i) name of the attendee;

(ii) name of the course provider;

(iii) name of instructor;

(iv) date of the course;

(v) title of the course;

(vi) number of CE hours;

(vii) course objectives; and

(viii) type of CE, for example seminar, real-time interactive, distance learning, teaching.

(5) An individual shall maintain adequate documentation as proof of compliance with this section for a period of two years after the end of the renewal cycle for which the CE is due.

(6) An individual may not carry forward any CE hours received before a granted license, including professional upgrades.

(7) CE hours shall be decreased proportionately according to the date of obtaining marriage and family therapist licensure within the two-year renewal cycle.

(8) The Division may defer or waive CE requirements in accordance with Section R156-1-308d.

[R156-60b-306. License Reinstatement—Between Two Years and Five Years After Expiration.

~~Under Subsection 58-1-308(5)(ii)(B) and subject to Subsection R156-1-308g(3)(b), an applicant for reinstatement of a~~

license between two years and five years after the date of expiration shall:

- ~~_____ (1) upon request, meet with the Board to evaluate the applicant's ability to safely and competently practice as a marriage and family therapist, and determine any additional education, experience, or examination requirements before reinstatement; and~~
- ~~_____ (2) if recommended by the Board, complete one or more of the following:~~
 - ~~_____ (a) establish a plan of supervision under an approved supervisor that may include up to 3,000 hours of marriage and family therapy and mental health therapy training as a marriage and family therapist temporary;~~
 - ~~_____ (b) pass the Marital and Family Therapy National Examination administered by the American Association for Marriage and Family Therapy Regulatory Boards; and~~
 - ~~_____ (c) complete up to 40 hours of professional education in subjects determined by the Board.]~~

R156-60b-305a. Supervisor Eligibility Requirements.

- (1) Under Subsections 58-60-305(1)(d) and (e), to be eligible to supervise an AMFT, the supervisor shall be:
 - (a) an active license holder in good standing, in one of the following classifications:
 - (i) APRN specializing in psychiatric mental health nursing;
 - (ii) clinical mental health counselor (CMHC);
 - (iii) clinical social worker (LCSW);
 - (iv) psychiatrist;
 - (v) psychologist; or
 - (vi) marriage and family therapist;
 - (b) licensed for at least two years as outlined in Subsection (1)(a) before providing supervision;
 - (c) engaged in the lawful practice of providing marriage and family therapy;
 - (d) a supervisor of no more than six individuals who are obtaining experience hours for further licensure, unless granted an exception in writing from the Division in collaboration with the Board;
 - (e) employed by or have a contract with the facility that employs the individual being supervised; and
 - (f) if supervising an AMFT, certified as a supervisor through the AAMFT or approved as a Utah supervisor by completion of one of the following:
 - (i) a supervision course in a Commission on Accreditation for Marriage and Family Therapy Education accredited marriage and family therapy program at an accredited university; or
 - (ii) 20 clock hours of instruction sponsored by AAMFT or the Utah Association for Marriage and Family Therapy as follows:
 - (A) four hours of review of models of marriage and family therapy and supervision;
 - (B) eight hours of marriage and family therapy supervision processes and practice;
 - (C) four hours of research on effective outcomes and processes of supervision; and
 - (D) four hours of AAMFT Code of Ethics, state rules, and case studies related to marriage and family therapy supervision;
- (2) A supervisor of an AMFT shall complete four hours of continuing education directly related to marriage and family therapy supervision, during each two-year renewal cycle, to maintain supervisor eligibility.
- (3) A training supervisor shall comply with duties and responsibilities established in Section R156-60b-305b.

R156-60b-305b. Supervised Experience Requirements - Supervision Contract - Duties and Responsibilities of Supervisor and Supervisee.

Under Subsection 58-60-305(1)(d), the supervised experience qualifications for licensure required under Title 58, Chapter 60, Part 3, Marriage and Family Therapist Licensing Act are established and clarified as follows:

- (1) Before accruing supervised experience, an individual shall:
 - (a) enter into a written supervision contract with a supervisor, signed by both parties; and
 - (b) verify that the supervisor has received acknowledgment from the Division of receipt of the Supervisor Verification document.
- (2) Before providing supervision, a supervisor shall:
 - (a) enter into a written supervision contract with a supervisee, signed by both parties;
 - (b) ensure that during the period of supervised experience the supervisee is a W-2 employee providing clinical mental health services at one of the following facilities:
 - (i) mental health agency;
 - (ii) in-patient or out-patient hospital;
 - (iii) educational institution;
 - (iv) non-profit organization; or
 - (v) government agency;
 - (c) submit to the Division:
 - (i) a complete Supervisor Verification form; and
 - (ii) certification that the supervision contract meets the requirements of Subsection R156-60b-305(3);
 - (d) receive an acknowledgment from the Division verifying receipt of the Supervisor Verification form.
- (3) A supervision contract shall include at least the following provisions:
 - (a) a plan to ensure the supervised individual has accessibility to the supervisor;
 - (b) a plan for meetings between the supervisor and supervisee, addressing:
 - (i) frequency;
 - (ii) duration;
 - (iii) objectives;
 - (iv) format, such as individual or small group; and
 - (v) location, such as face-to-face or remotely;
 - (c) a plan for documenting the ongoing supervision, including objective and measurable circumstances;
 - (d) a plan to address potential conflicts between the clinical recommendations of the supervisor and those of the representatives of the agency employing the supervisee;
 - (e) remedies in the event of a breach of contract by either the supervisor or supervisee, including procedures for contract termination; and
 - (f) if any part of the supervision will be conducted remotely, plans for:
 - (i) how the supervisor and supervisee will meet via real-time electronic methods allowing visual or audio interaction, and protect the security of electronic, confidential data and information;
 - (ii) how the supervisor will comply with the supervisor's duties and responsibilities as established in rule;
 - (iii) how the supervisor will physically visit the location where the supervisee practices on at least a quarterly basis during the period of supervision, or at such less frequency as is approved in advance by the Division in collaboration with the Board; and

(iv) how notice will be provided to the supervisee's clients or patients and employer regarding the supervisee's use of remote supervision.

(4) A supervisor shall have the following duties and responsibilities:

(a) ensure that during the period of supervision:

(i) the supervisee if a W-2 employee providing clinical mental health services at one of the following facilities:

(A) mental health agency;

(B) in-patient or out-patient hospital;

(C) educational institution;

(D) non-profit organization; or

(E) government agency;

(ii) the supervisor and supervisee remain appropriately licensed; and

(iii) the supervisor supervises no more than six individuals who are lawfully engaged in gathering experience for the practice of clinical mental health therapy;

(b) comply with the terms of the supervision contract;

(c) maintain a relationship with the supervisee which the supervisor is independent of control by the supervised individual, and that the ability of the supervisor to supervise and direct the practice of that individual is not compromised;

(d) be available to the supervisee for advice, consultation, and direction consistent with the standards and ethics of the profession and the requirements suggested by the total circumstances, including consideration of the supervisee's level of training, diagnosis of patients, and other factors known to the supervisor;

(e) periodically review the client records assigned to the supervisee;

(f) comply with the confidentiality requirements of Section 58-60-114;

(g) monitor the supervisee's performance for compliance with the laws, rules, standards, and ethics of the profession, and report violations to the Division; and

(h) upon completion of the supervised training, submit to the Division on Division-provided forms:

(i) documentation of the training hours completed by the supervised individual; and

(ii) an evaluation of the supervised individual with respect to the quality of the work performed and the individual's competency to practice in the profession.

(5) A supervisee shall have the following duties and responsibilities:

(a) before beginning any supervised training:

(i) enter into a written supervision contract with the supervisor in accordance with Subsection R156-60b-305b(3); and

(ii) ensure that the required Supervisor Verification form is received by the Division;

(b) maintain required licensure;

(c) maintain employment as a W-2 employee providing clinical mental health services at one of the following facilities:

(i) mental health agency;

(ii) in-patient or out-patient hospital;

(iii) educational institution;

(iv) non-profit organization; or

(v) government agency;

(d) comply with the terms of the supervision contract;

(e) maintain a relationship with the supervisor which the supervisor is independent of the supervised individuals control, and

that the ability of the supervisor to supervise and direct the practice of that individual is not compromised;

(f) be professionally responsible for the acts and practices of the supervisee that are a part of the required supervised training;

(g) comply with the confidentiality requirements of Section 58-60-114; and

(h) comply with applicable laws, rules, standards, and ethics of the profession.

(6) A supervisor shall notify the Division in writing of any of the following changes, within 30 days of the change:

(a) termination of a supervision contract; or

(b) a change in the supervised individuals place of employment.

(7)(a) If a supervisor does not support the issuance of a license to a supervised individual to practice unsupervised, or if the supervisor has other concerns regarding the individual that the supervisor believes requires input from the Division and Board, the supervisor shall submit to the Division a written explanation outlining the supervisor's concerns.

(b) Upon receipt of written concerns from a supervisor with respect to a supervisee, the Division:

(i) shall provide the supervised individual an opportunity to respond in writing to the Division regarding the supervisor's concerns;

(ii) shall review the written statements from the supervisor and supervisee with the Board; and

(iii) in consultation with the Board, the supervised individual may be required to obtain additional supervised experience hours, education, and training.

R156-60b-502. Unprofessional Conduct.

["Unprofessional conduct" includes:

(1) acting as a supervisor or accepting supervision duties of a supervisor without complying with or ensuring compliance with Sections R156-60-302 and R156-60b-302d;

(2) engaging in the supervised practice of mental health therapy if not in compliance with Sections R156-60-302 and R156-60b-302b;

(3) engaging in or aiding or abetting conduct or practices that are dishonest, deceptive or fraudulent;

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

(5) failing to maintain professional boundaries with a client by entering into a dual or multiple relationship without ensuring that there has been no exploitation or injury to the client or to the client's immediate family;

(6) with or without client consent, failing to maintain professional boundaries with a client after the formal termination of therapy or last professional contact, including engaging in a romantic, intimate, or sexual relationship;

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

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

(9) engaging in or aiding or abetting sexual harassment or any conduct that is exploitive or abusive with respect to a student;

NOTICES OF PROPOSED RULES

trainee, employee, or colleague with whom the licensee has supervisory or management responsibility;

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

(11) exploiting a client for personal gain;

(12) use of a professional client relationship to exploit a person that is known to have a personal relationship with a client for personal gain;

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

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

(15) failure to cooperate with the Division during an investigation; or

(16) violating a provision of the Revised AAMFT Code of Ethics effective January 1, 2015, which is adopted and incorporated by reference.]

Under Subsection 58-60-110(2), "unprofessional conduct" includes:

(1) using the abbreviated title of:

(a) AMFT unless licensed as an associate marriage and family therapist;

(b) AMFTE or AMFT-Extern unless licensed as an associate marriage and family therapist extern; or

(c) MFT unless licensed as a marriage and family therapist;

(2) acting as a supervisor or accepting supervision from a supervisor without complying with or ensuring compliance with Sections R156-60b-305a and 305b;

(3) directing one's mental health therapist supervisor to engage in a practice that would violate any statute, rule, or generally accepted professional or ethical standard of the supervisor's profession;

(4) engaging in the supervised practice of clinical mental health therapy:

(a) as a licensed AMFT or AMFT-Extern unless:

(i) the licensee has completed a clinical practicum program accredited by the Commission on Accreditation for Marriage and Family Therapy Education; and

(ii) the scope of practice is within the licensee's competency, abilities, and education;

(b) while not in compliance with Section R156-60b-305b;

(5) engaging in or aiding or abetting:

(a) conduct or practices that are dishonest, deceptive, or fraudulent;

(b) deceptive or fraudulent billing practices;

(c) sexual harassment or any conduct that is exploitive or abusive with respect to a student, trainee, employee, or colleague with whom the licensee has supervisory or management responsibility; or

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

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

(7) knowingly engaging in sexual activities or sexual contact with a client, former client, or another individual with whom the client maintains a close personal relationship with or without the client's consent;

(8) exploiting for personal gain a:

(a) client;

(b) former client; or

(c) person who has a personal relationship with a client;

(9) failing to:

(a) establish and maintain professional boundaries with a client or former client;

(b) exercise professional discretion and impartial judgment required for the performance of professional activities, duties, and functions;

(c) provide impartial, objective, and informed services, recommendations, or opinions with respect to:

(i) custodial or parental rights;

(ii) divorce;

(iii) domestic relationships;

(iv) adoptions;

(v) sanity;

(vi) competency;

(vii) mental health; or

(viii) other determination concerning an individual's civil or legal rights;

(d) maintain client records including records of assessment, treatment, progress notes, and billing information for a period of not less than ten years from the documented termination of services to the client;

(e) provide client records in a reasonable time upon written request of the client, or the client's legal guardian;

(f) obtain informed consent from the client or the client's legal guardian before taping, recording, or permitting third-party observations of client activities or records;

(g) protect the confidences of persons named or identified in the client records;

(h) abide by the AAMFT Code of Ethics, effective January 1, 2015, which is incorporated by reference;

(i) follow the Model Standards of Practice for Child Custody Evaluation of the Association of Family and Conciliation Courts (AFCC) May 2006, which is incorporated by reference; and

(j) cooperate with the Division during an investigation;

(10) if providing services remotely, failing to:

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

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

(c) appropriately store and dispose of electronic confidential data and information;

(11) violating:

(a) Section R156-60b-305a regarding supervisor experience; or

(b) Section R156-60b-305b as a supervisor or supervised individual.

KEY: licensing, therapists, marriage and family therapist

Date of Last Change: ~~January 10, 2023~~ 2024

Notice of Continuation: June 13, 2019

Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-60-301

NOTICE OF PROPOSED RULE		
TYPE OF FILING: Amendment		
Rule or Section Number:	R156-60c	Filing ID: 56216

Agency Information

1. Department:	Commerce	
Agency:	Professional Licensing	
Building:	Heber M. Wells Building	
Street address:	160 E 300 S	
City, state and zip:	Salt Lake City, UT 84111-2316	
Mailing address:	PO Box 146741	
City, state and zip:	Salt Lake City, UT 84114-6741	
Contact persons:		
Name:	Phone:	Email:
Jana Johansen	801-530-6628	janajohansen@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule or section catchline:
R156-60c. Clinical Mental Health Counselor Licensing Act Rule
3. Purpose of the new rule or reason for the change:
The Division of Professional Licensing (Division) in collaboration with Clinical Mental Health Licensing Board makes this filing with the intent that the amendments being proposed incorporate changes due to H.B. 166 passed during the 2023 General Session, merge provisions found in Rule 156-60, Mental Health Practice Act Rule, which is being recommended for repeal, and correct grammar and formatting errors.
4. Summary of the new rule or change:
Amendment to Section R516-60c-102 adds definitions from the Mental Health Practice Act Rule (R156-60, being repealed) which will provide clarity and continuity for readers. This section also includes grammar and formatting corrections.
Amendment to Section R516-60c-302a adds provisions regarding experience being repealed with the Mental Health Practice Act Rule. In addition, grammar, formatting, and citation corrections are proposed. Amendments in this section also reflect changes enacted with H.B. 166 (2023) as well.
Amendments to Section R516-60c-302b make a correction to grammar.

Amendments to Section R516-60c-302c make grammar and citation corrections.

Amendments to Section R516-60c-302d add sections of the Metal Health Practice Act Rule and clarify what constitutes the required suicide prevention course, as well as incorporating provisions from the repealed Rule R516-60.

Amendments to Section R516-60c-303 correct grammar and clarify requirements that the Board historically uses to determine reinstatement.

Amendments to Section R516-60c-304 add provisions regarding continuing education being repealed with the Mental Health Practice Act Rule.

Amendments to Section R516-60c-305a add provisions regarding supervisor eligibility being repealed with the Mental Health Practice Act Rule.

Amendments to Section R516-60c-305b add provisions regarding supervised experience, supervision contracts, and the duties and responsibilities of a supervisor and supervisee being repealed with the Mental Health Practice Act Rule.

Amendment to Section R156-60c-306 removes section that is incorporated into Section R156-60c-303.

Amendments to Section R516-60c-502 corrects formatting, grammar, and citations.

(EDITOR'S NOTE: The proposed repeal of Rule R156-60 is under ID 56209 in this issue, December 15, 2023, of the Bulletin.)

Public Hearing Information:

There will be a public hearing on 01/16/2024 at 9:00 AM at the Heber Wells Building, 160 E 300 S, Conference Room 474, Salt Lake City, UT. Also available via Google Meet (see below).

Google Meeting link:
meet.google.com/yfq-psko-xgt

Or join by phone:
(US) +1 304-691-0096
PIN: 605869246

Fiscal Information**5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:****A) State budget:**

The proposed changes are not expected to have any fiscal impact on state government revenues or expenditures.

The requested changes reflect current industry standards as approved by the Clinical Mental Health Licensing Board and will continue to ensure that the minimum required standards have been met.

B) Local governments:

The proposed changes are not expected to have any fiscal impact on local governments' revenues or expenditures.

This rule has been amended to provide technical, conforming, and stylistic changes in accordance with the Rulewriting Manual for Utah and current industry standards as approved by the Clinical Mental Health Licensing Board and will continue to ensure that the minimum required standards have been met.

None of these changes substantively changes the processes so there is no fiscal impact.

C) Small businesses ("small business" means a business employing 1-49 persons):

The proposed changes are not expected to have any fiscal impact on small businesses' revenues or expenditures.

This rule has been amended to provide technical, conforming, and stylistic changes in accordance with the Rulewriting Manual for Utah and current industry standards as approved by the Clinical Mental Health Licensing Board and will continue to ensure that the minimum required standards have been met.

None of these changes substantively change the processes so there is no fiscal impact.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):

The proposed changes are not expected to have any fiscal impact on non-small businesses revenues or expenditures.

This rule has been amended to provide technical, conforming, and stylistic changes in accordance with the Rulewriting Manual for Utah and current industry standards as approved by the Clinical Mental Health Licensing Board and will continue to ensure that the minimum required standards have been met.

None of these changes substantively change the processes so there is no fiscal impact.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

The proposed changes are not expected to have any fiscal impact on affected persons.

This rule has been amended to provide technical, conforming, and stylistic changes in accordance with the Rulewriting Manual for Utah and current industry standards as approved by the Clinical Mental Health Licensing Board and will continue to ensure that the minimum required standards have been met.

None of these changes substantively change the processes for affected persons, so there is no fiscal impact.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):

As described above in Box 5(E) for other persons, the proposed changes are not expected to have any compliance costs for affected persons.

G) Regulatory Impact Summary Table (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 will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$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

H) Department head comments on fiscal impact and approval of regulatory impact analysis:

The Executive Director of the Department of Commerce, Margaret W. Busse, has reviewed and approved this fiscal analysis.

The Division in collaboration with the Clinical Mental Health Licensing Board proposes these amendments in response to the statutory changes made in H.B. 166 (2023). The changes are to move the provisions of Rule R156-60, due to the repeal of Rule R156-60, to update this rule to encompass current statutory requirements and practices as they apply to clinical mental health counselors, make nonsubstantive grammar and formatting changes to streamline and to update this rule, and comply with the Rulewriting Manual for Utah.

Small Businesses (less than 50 employees):

The Division does not expect any foreseeable impact on small businesses in the practice of clinical mental health counselors in the state of Utah.

The proposed amendments are to conform to the requirements of H.B. 166 (2023). The changes are to move the provisions of Rule R156-60, due to the repeal of Rule R156-60, to update this rule to encompass current statutory requirements and practices in the profession.

Further, the Division does not foresee any negative impact on small businesses since grammatical and formatting amendments are made to make the rule comport to the Rulewriting Manual for Utah.

Non-Small Businesses (50 or more employees):

The Division finds that the non-small businesses in the clinical mental health counselor industry in the state of Utah will not suffer a negative fiscal impact from the proposed rule amendments.

However, these amendments will have no expected fiscal impact for non-small businesses in Utah for the same rationale as described above for small businesses.

Further, any of these costs are either inestimable, for the reasons stated above, or there is no fiscal impact.

Citation Information**6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Section 58-60-401	Subsection 58-1-106(1)(a)	Subsection 58-1-202(1)(a)
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Incorporations by Reference Information**7. Incorporations by Reference:****A) This rule adds, updates, or removes the following title of materials incorporated by references:**

Official Title of Materials Incorporated (from title page)	Model Standards for Practice of Child Custody Evaluation
Publisher	Association of Family and Conciliation Courts (AFCC)
Issue Date	May 2006

Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 01/17/2024

B) A public hearing (optional) will be held:

Date:	Time:	Place (physical address or URL):
01/16/2024	9:00 AM	See information in Box 4 above.

9. This rule change MAY become effective on: 01/24/2024

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

Agency Authorization Information

Agency head or designee and title:	Mark B. Steinagel, Division Director	Date:	11/27/2023
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R156. Commerce, Professional Licensing.**R156-60c. Clinical Mental Health Counselor Licensing Act Rule. R156-60c-102. Definitions.**

~~[The following rule definitions supplement the definitions]~~ Terms used in this rule are defined in Title 58, Chapter 1, Division of Professional Licensing Act and Title 58, Chapter 60, Mental Health Professional Practice Act. In addition:

(1) "ACMHC" means an associate clinical mental health counselor.

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

(a) Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition: DSM-5-TR published by the American Psychiatric Association;

(b) International Classification of Diseases, Tenth Revision, Clinical Modification (ICD-10-CM) for Physicians, Professional Edition published by the American Medical Association; or

(c) International Classification of Diseases, Tenth Revision, Clinical Modification (ICD-10-CM): The Complete Official Draft Code Set published by the American Medical Association.

(3) "APRN" as used in Subsection R156-60c-305a(1)(a)(i) means an advanced practice registered nurse who meets the

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requirements of Subsection 58-31b-302(5)(g) to practice within the psychiatric mental health nursing specialty.

(4) "Client" or "patient" means an individual who, if competent requests, or if not competent to request is lawfully provided professional services by a mental health therapist when the mental health therapist:

(a) agrees verbally or in writing to provide professional services to that individual; or

(b) without an overt agreement does in fact provide professional services to that individual.

(5) "Clinical mental health experience," as used in Subsection R146-60c-302a(1) includes clinical mental health therapy hours obtained direct with clients and:

(a) conducting, with documentation, an intake interview, mental status evaluation, biopsychosocial history, mental health history, or assessment for treatment planning and caseload management;

(b) obtaining knowledge related to techniques and interventions for the prevention and treatment of a broad range of mental health issues;

(c) strategies for interfacing with the legal system regarding court-referred clients;

(d) strategies for interfacing with integrated behavioral health care professionals; and

(e) strategies to advocate for persons with mental health issues.

(6) "Clinical mental health therapy," as used in Subsections R156-60c-302a(1)(a) and (b), means the direct practice of mental health counseling, which focuses on the assessment, diagnosis, and treatment of mental disorder, emotional, and other behavioral disturbances using individual, group, and family therapy modalities.

(7) "CMHC" means a clinical mental health counselor.

([4]8) "Deficiency," as used in Subsection 58-60-117(1)(d), means that the educational degree upon which licensure is to be based fails to include coursework listed in any one or more of Subsections R156-60c-102([4]11)(b)(i) through (x) and R156-60c-102([4]11)(c).

(9) "Direct supervision" of a supervisee in training, as used in Subsection 58-60-405(1)(e) means the supervisor meets with the supervisee:

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

(b) remotely via synchronous electronic methods that allow for visual and audio interaction between the supervisor and supervisee, in accordance with the requirements of their supervision contract.

(10) "Employee" means a W-2 employee as defined by the Internal Revenue Service.

(11) "Equivalent field," as used in Subsection 58-60-405(1)(c)(i)(B), means that the educational program:

(a) prepares students to practice mental health counseling through the study of generally recognized clinical mental health counseling principles, methods, and procedures;

(b) contains three semester or four quarter credit hours of graduate-level courses in the following subjects:

(i) social and cultural diversity;

(ii) group counseling and group work;

(iii) human growth and development;

(iv) career development;

(v) counseling and helping relationships;

(vi) substance-related and addictive disorders;

(vii) assessment and testing;

(viii) mental status examination and the appraisal of Diagnostic and Statistical Manual maladaptive and psychopathological behavior;

(ix) research and program evaluation; and

(x) professional counseling orientation and ethical practice; and

(c) includes 700 documented hours of supervised clinical training from at least one practicum or internship, of which 240 hours consists of providing therapy directly to clients.

(12) "Independent control," as used in Subsections R156-60c-305b(4)(c) and (5)(e), means not being employed by the supervisee, or by an agency owned in total or in part by the supervisee, or that the supervisee has any controlling interest.

([2]13) "Internship" means one or more courses completed as part of a graduate program at an accredited school:

(a) [in a]obtained at one of the following public or private [agency]agencies:

(i) mental health agency;

(ii) in-patient or out-patient hospital;

(iii) educational institution;

(iv) non-profit organization; or

(v) government agency;

(b) while engaged in the clinical practice of mental health therapy as defined in Subsection 58-60-102(7); and

([b]c) under supervision provided by a qualified mental health training supervisor as defined in [Section R156-60c-302a]Subsection R156-60c-305a(1)(a).

(14) "On-the-job training program" means a program that:

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

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

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

(d) the individual is an employee of a public or private mental health agency, in-patient or out-patient hospital, educational institution, or government agency, and is providing clinical mental health services; and

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

([3]15) "Practicum" means one or more courses completed as part of a graduate program at an accredited school:

(a) [in a]obtained at one of the following public or private [agency]agencies:

(i) mental health agency;

(ii) in-patient or out-patient hospital;

(iii) educational institution;

(iv) non-profit organization; or

(v) government agency;

(b) while engaged in the clinical practice of mental health therapy as defined in Subsection 58-60-102(7); and

([b]c) under supervision provided by a qualified mental health training supervisor as defined in Subsection [R156-60c-302a(3)]R156-60c-305a(1)(a).[

(4) "Equivalent field," as used in Section 58-60-405, means that the educational program:

(a) prepares students to practice mental health counseling through the study of generally recognized clinical mental health counseling principles, methods, and procedures;

~~(b) contains three semester or four quarter credit hours of graduate level courses in the following subjects:~~

- ~~(i) social and cultural diversity;~~
- ~~(ii) group counseling and group work;~~
- ~~(iii) human growth and development;~~
- ~~(iv) career development;~~
- ~~(v) counseling and helping relationships;~~
- ~~(vi) substance related and addictive disorders;~~
- ~~(vii) assessment and testing;~~
- ~~(viii) mental status examination and the appraisal of Diagnostic and Statistical Manual maladaptive and psychopathological behavior;~~

~~(ix) research and program evaluation; and~~

~~(x) professional counseling orientation and ethical practice; and~~

~~(c) includes 700 documented hours of supervised clinical training from at least one practicum or internship, of which 240 hours consists of providing therapy directly to clients.]~~

~~(16) "Supervision contract" means a written, signed contract between a supervisor and an individual being supervised to facilitate the completion of experience requirements for licensure and includes the provisions required by Subsection R156-60c-305b(3).~~

~~(17) "Supervisor Verification form" means the form, provided by the Division, to document who is providing supervision to a supervised individual, that at a minimum includes:~~

- ~~(a) name and license number of the individual;~~
- ~~(b) name and license number of the supervisor; and~~
- ~~(c) supervised individuals place of employment.~~

~~([5]18) "Unprofessional conduct" is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-60c-502.~~

R156-60c-302a. Qualifications for Licensure - [Supervised Training]Experience Requirements.

~~(1) [The]Under Subsection 58-60-405(1)(d), the minimum 3,000 hours of clinical mental health experience required shall include[counselor and mental health therapy training qualifying an applicant for licensure as a clinical mental health counselor under Subsections 58-60-405(1)(d) and (e) and Section R156-60-302 shall be completed]:~~

- ~~(a) 1,000 hours providing clinical mental health therapy as defined in Subsection 58-60-102(7), directly to clients; and~~
- ~~(b) 75 hours of clinical mental health therapy performed under direct supervision per Subsection R156-60c-102(9).~~

~~(2) Clinical mental health experience may include the following:~~

- ~~(a) individual, family, and group therapy;~~
- ~~(b) crisis intervention;~~
- ~~(c) intermediate treatment; and~~
- ~~(d) long-term treatment.~~

~~(3) Supervised experience shall be obtained:~~

~~(a) after completion of the education in Section 58-60-405 and may not include any clinical internship or practicum hours;~~

~~([a]b) unless Subsection (4) applies, while the applicant is licensed as an [associate clinical mental health counselor]ACMHC;~~

~~([b]c) while the applicant is a W-2 employee providing clinical mental health services at one of the following facilities;[as defined in Subsection R156-60-102(5), of a public or private agency engaged in mental health therapy; and]~~

- ~~(i) mental health agency;~~
- ~~(ii) in-patient or out-patient hospital;~~
- ~~(iii) educational institution;~~

~~(iv) non-profit organization; or~~

~~(v) government agency;~~

~~(d) in accordance with the supervision experience requirements of Section R156-60c-305b;~~

~~([e]e) under [a program of supervision by-]a supervisor who meets the requirements of [Subsection (3) and]Section [R156-60-302]R156-60c-305a; and~~

~~(f) in not less than 18 months~~

~~(4) Notwithstanding Subsection R156-60c-302a(3)(c), an individual may qualify for licensure when:~~

~~(a) exempt under Subsection 58-1-307(1)(b); or~~

~~(b) they completed training in another jurisdiction while:~~

~~(i) licensed as the equivalent of an ACMHC; or~~

~~(ii) engaged in the practice of clinical mental health counselor while not required to be licensed; and~~

~~(c) satisfactory evidence is provided to the Division and Board documenting training is equivalent to and meets the experience requirements under this section and Subsections 58-60-405(1)(d) and (e).~~

~~(5) The exemption in Subsection 58-1-307(1)(b) does not permit an applicant to engage in the required hours of clinical mental health training or mental health therapy training without first becoming licensed as an ACMHC.]~~

~~(2) An applicant for licensure as a clinical mental health counselor who is not seeking licensure by endorsement based upon licensure in another jurisdiction, and who has completed in whole or in part the clinical mental health counselor and mental health therapy training requirements under Subsection (1) outside the state, may receive credit for that training if the applicant demonstrates, by evidence satisfactory to the Division and Board, that the training is equivalent to and meets the requirements for training under this section and Subsections 58-60-405(1)(d) and 58-60-405(1)(e).~~

~~(3) To qualify as a clinical mental health counselor training supervisor under Subsections 58-60-405(1)(d) and 58-60-405(1)(e), the supervisor shall:~~

~~(a) be currently licensed in good standing as a clinical mental health counselor, psychiatrist, psychologist, clinical social workers, registered psychiatric mental health nurse specialist, or marriage and family therapist, in the state where the supervised training is performed;~~

~~(b) be licensed in good standing and engaged in the lawful practice of mental health therapy for at least 4,000 hours in the two consecutive years before beginning supervision;~~

~~(c)(i) be employed by or have a contract with the mental health agency that employs the supervisee; and~~

~~(ii) comply with Subsection R156-60-302(4)(d) by not being employed by the supervisee, or by an agency owned in total or in part by the supervisee, or in which the supervisee has any controlling interest;~~

~~(d) enter into a written supervising contract with the supervisee in accordance with Section R156-60-302;~~

~~(e) supervise no more than six individuals who are lawfully engaged in training for the practice of mental health therapy unless otherwise approved by the Division in collaboration with the Board; and~~

~~(f) comply with each of the duties and responsibilities uniformly established in Section R156-60-302.]~~

R156-60c-302b. Qualifications for Licensure - Examination Requirements.

Under Subsection 58-60-405(1)(f), an applicant for licensure as a clinical mental health counselor shall pass the

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following National Board for Certified Counselors (NBCC) examinations:

- (1) ~~the~~ National Clinical Mental Health Counseling Examination (NCMHCE); and
- (2) ~~the~~ National Counselor Examination (NCE).

R156-60c-302c. Qualifications for Licensure - Post Degree Programs.

(1) An individual whose educational degree is ~~deficient~~~~[has a deficiency]~~ as defined in Subsection R156-60c-102([+]~~8~~), in no more than 12 semesters or 18 quarter credits, may complete the missing coursework post-degree to obtain associate clinical mental health counselor or clinical mental health counselor licensure if:

- (a) full credit is awarded;
- (b) ~~all~~ courses are taken through one institution; and
- (c) the coursework is obtained from a master's or doctoral program in:

(i) clinical mental health counseling, clinical rehabilitation counseling, or counselor education and supervision, if the program is accredited by the Council for Accreditation Counseling and Related Education Programs (CACREP); or

(ii) clinical mental health counseling or an equivalent field as defined in Subsection R156-60c-102([4]~~11~~), if the program is affiliated with an institution that has accreditation recognized by the Council for Higher Education Accreditation (CHEA).

(2) An individual who qualifies to complete requirements post-degree under this section, and who qualifies for temporary licensure as an associate clinical mental health counselor extern under Section 58-60-117, may engage in clinical mental health counseling.

R156-60c-302d. Qualifications for Licensure - Suicide Prevention Course.

(1) Under Subsection 58-60-405(1)(d)(iii), the two hour suicide prevention course required to obtain clinical mental health counselor licensure shall be:

(a) approved, sponsored, or conducted by one of the following:

- (i) accredited college or university;
- (ii) county, state, or federal agency;
- (iii) professional association, or similar body, involved in clinical mental health therapy; or
- (iv) mental health agency that provides clinical mental health services;

(b) relevant to mental health therapy and suicide prevention, consistent with the laws of this state, and include one or more of the following components:

- (i) suicide concepts and facts;
- (ii) suicide risk assessment, crisis intervention, and first aid;
- (iii) evidence-based intervention for suicide risk;
- (iv) continuity of care and follow-up services for suicide risk; and
- (v) therapeutic alliances for intervention in suicide risk;

(c) completed in not less than 50-minute blocks of time in one of the following formats:

- (i) classroom lecture and discussion;
- (ii) workshops;
- (iii) synchronous webinars;
- (iv) asynchronous online self-pace modules;
- (v) case study reviews; or

- (vi) simulations; and
- (d) completed within two years of application.
- (2) The course provider shall provide certification of:
 - (a) course attendance;
 - (b) hours completed;
 - (c) name of provider; and
 - (d) date of completion.
- (3) An applicant for licensure shall submit certification of course completion, within the preceding two years, to the Division as a prerequisite for licensure.

R156-60c-303. Renewal and Reinstatement of License~~[Cycle-- Procedures]~~.

(1) Under Subsection 58-1-308(1), the renewal date for the two-year renewal cycle for licenses under Title 58, Chapter 60, Part 4, Clinical Mental Health Counselor Licensing [Professional Practice] Act, is established in Section R156-1-308a.

(2) Clinical mental health counselor license renewal~~[Renewal]~~ and reinstatement procedures shall be in accordance with Sections R156-1-308[~~b~~]a through R156-1-308[~~f~~]and R156-60c-306, except as provided in Subsection (3).

(3) Under Subsection 58-1-308(6)(a) and Section R156-1-308g, an applicant for reinstatement of licensure as a CMHC whose license has been expired over five years, shall upon request:

- (a) meet with the Board to evaluate the applicant's ability to safely and competently practice clinical mental health therapy; and
- (b) if recommended by the Board, complete one or more of the following:

(i) establish a plan of supervision under an approved supervisor, which may include up to 3,000 hours of clinical mental health experience and mental health therapy training as an ACMHC before qualifying for reinstatement of the CMHC license;

(ii) retake and pass the NBCC's NCMHCE or NCE, or both; or

(iii) complete up to 40 hours of continuing education in subjects determined by the Board.

R156-60c-304. Continuing Education.

(1) Under Section 58-60-105, the continuing ~~[professional]~~ education (CE) requirements for each two-year renewal cycle beginning October 1 of each even-numbered year, for a [clinical mental health counselor] CMHC licensed under Title 58, Chapter 60, Part 4, Clinical Mental Health Counselor Licensing Act [are established in Section R156-60-105.] shall be 40 hours and include:

(a) six hours in ethics of clinical practice, law, or technology; and

(b) two hours in suicide prevention, this course shall meet the requirements of Section R156-60c-302d.

(2) An individual who completes more than the required number of CE hours during a two-year renewal cycle may carry over up to ten hours of excess to the next two-year renewal cycle.

(3) CE shall be:

(a) approved, conducted, or under the sponsorship of one of the following:

- (i) accredited college or university;
- (ii) county, state, or federal agency;
- (iii) professional association, or similar body, involved in clinical mental health therapy; or
- (iv) mental health agency that provides clinical mental health services;

(b) completed in not less than 50-minute blocks of time in one of the following formats:

(i) college or university lecture and discussion up to a maximum of:

- (A) three CE hours per semester hour; or
- (B) 1.5 CE hours per quarter hour;

(ii) conference;

(iii) lecture or instruction up to a maximum of two times per course, up to a maximum of ten CE hours for a CMHC;

- (iv) seminar;
- (v) training session;
- (vi) synchronous distance learning course that is clearly documented as real-time and interactive;
- (vii) asynchronous distance learning course that is not real-time and interactive, up to a maximum of ten CE hours for a CMHC;
- (viii) specialty certification;
- (ix) certifiable clinical readings, up to a maximum of ten hours;
- (x) direct supervision of an ACMHC, CSW, or AMFT completing the experience requirements for licensure, up to a maximum of ten hours for a CMHC; and
- (xi) volunteer service on a board, committee, or in a leadership role in any state, national, or international organization for the development and improvement of the licensee's profession; one CE hour may be counted as a regular credit, ethics of clinical practice, law, or technology credit, up to a maximum of six CE hours during each two-year period;

(c) prepared and presented by individuals who are qualified by education, training, and experience to provide CE;

(d) relevant to the licensee's scope of practice; and

(e) verified by a certificate of course completion that shall include:

- (i) name of the attendee;
- (ii) name of course provider;
- (iii) name of instructor;
- (iv) date of the course;
- (v) title of the course;
- (vi) number of CE hours;
- (vii) course objectives; and
- (viii) type of CE, for example, seminar, real-time interactive, distance learning, teaching.

(4) An individual shall maintain adequate documentation as proof of compliance with this section for a period of two years after the end of the renewal cycle for which the CE is due.

(5) An individual may not carry forward any CE hours received before a granted license, including professional upgrades.

(6) CE hours shall be decreased proportionately according to the date of obtaining clinical mental health counselor licensure within the two-year renewal cycle.

(7) The Division may defer or waive CE requirements in accordance with Section R156-1-308d.

R156-60c-305a. Supervisor Eligibility Requirements.

(1) Under Subsections 58-60-405(1)(d) and (e), to be eligible to supervise an ACMHC, the supervisor shall be:

- (a) an active license holder in good standing, in one of the following classifications:
 - (i) APRN specializing in psychiatric mental health nursing;
 - (ii) CMHC;
 - (iii) clinical social worker (LCSW);
 - (iv) psychiatrist;
 - (v) psychologist; or
 - (vi) marriage and family therapist;

- (b) licensed for at least two years as outlined in this Subsection (1)(a) before providing supervision;
- (c) engaged in the lawful practice of providing clinical mental health therapy;
- (d) a supervisor of no more than six individuals who are obtaining experience hours for further licensure, unless granted an exception in writing from the Division in collaboration with the Board; and
- (e) employed by or have a contract with the facility that employs the individual being supervised;

(2) A training supervisor shall comply with duties and responsibilities established in Section R156-60c-305b.

R156-60c-305b. Supervised Experience Requirements - Supervision Contract - Duties and Responsibilities of Supervisor and Supervisee.

Under Subsection 58-60-405(1)(d), the supervised experience qualifications for licensure required under Title 58, Chapter 60, Part 4, Clinical Mental Health Counselor Licensing Act, are established and clarified as follows:

(1) Before accruing supervised experience, an individual shall:

- (a) enter into a written supervision contract with a supervisor, signed by both parties; and

- (b) verify that the supervisor has received acknowledgment from the Division of receipt of the Supervisor Verification document.

(2) Before providing supervision, a supervisor shall:

- (a) enter into a written supervision contract with a supervisee, signed by both parties;

- (b) ensure that during the period of supervised experience the supervisee is a W-2 employee providing clinical mental health services at one of the following facilities:

- (i) mental health agency;
- (ii) in-patient or out-patient hospital;
- (iii) educational institution;
- (iv) non-profit organization; or
- (v) government agency;

- (c) submit to the Division:

- (i) a complete Supervisor Verification form; and

- (ii) certification that the supervision contract meets the requirements of Subsection (3);

- (d) receive an acknowledgment from the Division verifying receipt of the Supervisor Verification form.

(3) A supervision contract shall include at least the following provisions:

- (a) a plan to ensure the supervised individual has accessibility to the supervisor;

- (b) a plan for meetings between the supervisor and supervisee, addressing:

- (i) frequency;
- (ii) duration;
- (iii) objectives;
- (iv) format, such as individual or small group; and
- (v) location, such as face-to-face or remotely;

- (c) a plan for documenting the ongoing supervision, including objective and measurable circumstances;

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

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(e) remedies in the event of a breach of contract by either the supervisor or supervisee, including procedures for contract termination; and

(f) if any part of the supervision will be conducted remotely, plans for:

(i) how the supervisor and supervisee will meet via real-time electronic methods allowing visual or audio interaction, and protect the security of electronic, confidential data and information;

(ii) how the supervisor will comply with the supervisor's duties and responsibilities as established in rule;

(iii) how the supervisor will physically visit the location where the supervisee practices on at least a quarterly basis during the period of supervision, or at such lesser frequency as is approved in advance by the Division in collaboration with the Board; and

(iv) how notice will be provided to the supervisee's clients or patients and employer regarding the supervisee's use of remote supervision.

(4) A supervisor shall have the following duties and responsibilities:

(a) ensure that during the period of supervision:

(i) the supervisee is a W-2 employee providing clinical mental health services at one of the following facilities:

(A) mental health agency;

(B) in-patient or out-patient hospital;

(C) educational institution;

(D) non-profit organization; or

(E) government agency;

(ii) the supervisor and supervisee remain appropriately licensed; and

(iii) the supervisor supervises no more than six individuals who are lawfully engaged in gathering experience for the practice of clinical mental health therapy;

(b) comply with the terms of the supervision contract;

(c) maintain a relationship with the supervisee which the supervisor is independent of control by the supervised individual, and that the ability of the supervisor to supervise and direct the practice of that individual is not compromised;

(d) be available to the supervisee for advice, consultation, and direction consistent with the standards and ethics of the profession and the requirements suggested by the total circumstances, including consideration of the supervisee's level of training, diagnosis of patients, and other factors known to the supervisor;

(e) periodically review the client records assigned to the supervisee;

(f) comply with the confidentiality requirements of Section 58-60-114;

(g) monitor the supervisee's performance for compliance with the laws, rules, standards, and ethics of the profession, and report violations to the Division; and

(h) upon completion of the supervised training, submit to the Division on Division-provided forms:

(i) documentation of the training hours completed by the supervised individual; and

(ii) an evaluation of the supervised individual with respect to the quality of the work performed and the individual's competency to practice in the profession.

(5) A supervisee shall have the following duties and responsibilities:

(a) before beginning any supervised training;

(i) enter into a written supervision contract with the supervisor in accordance with Subsection (3); and

(ii) ensure the required Supervisor Verification form is received by the Division;

(b) maintain required licensure;

(c) maintain employment as a W-2 employee providing clinical mental health services at one of the following facilities:

(i) mental health agency;

(ii) in-patient or out-patient hospital;

(iii) educational institution;

(iv) non-profit organization; or

(v) government agency;

(d) comply with the terms of the supervision contract;

(e) maintain a relationship with the supervisor which the supervisor is independent of the supervised individuals control, and that the ability of the supervisor to supervise and direct the practice of that individual is not compromised;

(f) be professionally responsible for the acts and practices of the supervisee that are a part of the required supervised training;

(g) comply with the confidentiality requirements of Section 58-60-114; and

(h) comply with applicable laws, rules, standards, and ethics of the profession.

(6) A supervisor shall notify the Division in writing of any of the following changes, within 30 days of the change:

(a) termination of a supervision contract; or

(b) a change in the supervised individuals place of employment.

(7)(a) If a supervisor does not support the issuance of a license to a supervised individual to practice unsupervised, or if the supervisor has other concerns regarding the individual that the supervisor believes requires input from the Division and Board, the supervisor shall submit to the Division a written explanation outlining the supervisor's concerns.

(b) Upon receipt of written concerns from a supervisor with respect to a supervisee, the Division:

(i) shall provide the supervised individual an opportunity to respond in writing to the Division regarding the supervisor's concerns;

(ii) shall review the written statements from the supervisor and supervisee with the Board; and

(iii) in consultation with the Board, the supervised individual may be required to obtain additional supervised experience hours, education, and training.[

R156-60c-306. License Reinstatement – Between Two Years and Five Years After Expiration.

~~Under Subsection 58-1-308(5) and Section R156-1-308g, an applicant for reinstatement of licensure between two years and five years after the date the license expired shall, at the request of the Division, meet with the Board to evaluate the applicant's ability to safely and competently practice as a clinical mental health counselor, and determine any additional education, experience, or examination requirements before reinstatement. Additional requirements, as determined necessary by the Board, may include any one or more of the following:~~

~~(1) an established plan of supervision under an approved supervisor, which may include up to 3,000 hours of clinical training as an associate clinical mental health counselor extern;~~

~~(2) retake and pass the NBCC's National Clinical Mental Health Counseling Examination or National Counseling Examination, or both; or~~

~~(3) complete a minimum of 40 hours of continuing education in subjects determined by the Board.]~~

R156-60c-502. Unprofessional Conduct.

[~~—"Unprofessional conduct" includes:~~

~~(1) acting as a supervisor or accepting supervision duties of a supervisor without complying with or ensuring compliance with Sections R156-60-302 and R156-60c-302a;~~

~~(2) engaging in the supervised practice of mental health therapy while not in compliance with Section R156-60-302 or R156-60c-302a;~~

~~(3) engaging in or aiding or abetting conduct or practices that are dishonest, deceptive, or fraudulent;~~

~~(4) engaging in or aiding or abetting deceptive or fraudulent billing practices;~~

~~(5) failing to establish and maintain appropriate professional boundaries with a client or former client;~~

~~(6) engaging in dual or multiple relationships with a client or former client in which there is a risk of exploitation or potential harm to the client;~~

~~(7) engaging in sexual activities or sexual contact with a client with or without client consent;~~

~~(8) engaging in sexual activities or sexual contact with a former client within two years of documented termination of services;~~

~~(9) engaging in sexual activities or sexual contact at any time with a former client who is especially vulnerable or susceptible to being disadvantaged because of the client's personal history, current mental status, or any condition that could reasonably be expected to place the client at a disadvantage recognizing the power imbalance that exists or may exist between the counselor and the client;~~

~~(10) engaging in sexual activities or sexual contact with a client's relative or another individual with whom the client maintains a relationship, if that individual is especially vulnerable or susceptible to being disadvantaged because of personal history, current mental status, or any condition that could reasonably be expected to place that individual at a disadvantage recognizing the power imbalance that exists or may exist between the counselor and that individual;~~

~~(11) engaging in physical contact with a client if there is a risk of exploitation or potential harm to the client resulting from the contact;~~

~~(12) engaging in or aiding or abetting sexual harassment or any conduct that is exploitive or abusive concerning a student, trainee, employee, or colleague with whom the licensee has supervisory or management responsibility;~~

~~(13) failing to provide impartial, objective, and informed services, recommendations, or opinions concerning custodial or parental rights, divorce, domestic relationships, adoptions, sanity, competency, mental health, or any other determination concerning an individual's civil or legal rights;~~

~~(14) exploiting a client for personal gain;~~

~~(15) using a professional client relationship to exploit, for personal gain, an individual whom the licensee knows has a personal relationship with the client;~~

~~(16) failing to maintain appropriate client records for a period of not less than ten years from the documented termination of services to the client;~~

~~(17) failing to obtain informed consent from the client or legal guardian before taping, recording, or permitting third person observations of client care or records;~~

~~(18) failing to cooperate with the Division during an investigation; and~~

~~(19) failing to abide by the American Mental Health Counselors Association Code of Ethics, 2020, which is incorporated by reference.]~~

~~Under Subsection 58-60-110(2), "unprofessional conduct" includes:~~

~~(1) using the abbreviated title of:~~

~~(a) ACMHC unless licensed as an associate clinical mental health counselor;~~

~~(b) ACMHCE or ACMHC-Extern unless licensed as an associate clinical mental health counselor extern; or~~

~~(c) CMHC unless licensed as a clinical mental health counselor;~~

~~(2) acting as a supervisor or accepting supervision from a supervisor without complying with or ensuring compliance with Sections R156-60c-305a and R156-60c-305b;~~

~~(3) directing one's mental health therapist supervisor to engage in a practice that would violate any statute, rule, or generally accepted professional or ethical standard of the supervisor's profession;~~

~~(4) engaging in the supervised practice of clinical mental health therapy:~~

~~(a) as a licensed ACMHC or ACMHC-Extern unless:~~

~~(i) the licensee has completed a clinical practicum as part of a CACREP or CHEA accredited master's degree program; and~~

~~(ii) the scope of practice is within the licensee's competency, abilities, and education;~~

~~(b) while not in compliance with Section R156-60c-305b;~~

~~(5) engaging in or aiding or abetting:~~

~~(a) conduct or practices that are dishonest, deceptive, or fraudulent;~~

~~(b) deceptive or fraudulent billing practices;~~

~~(c) sexual harassment or any conduct that is exploitive or abusive with respect to a student, trainee, employee, or colleague with whom the licensee has supervisory or management responsibility; or~~

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

~~(6) engaging in dual or multiple relationships with a client or former client when there is a risk of or potential harm to the client;~~

~~(7) knowingly engaging in sexual activities or sexual contact with a client, former client, client's relative or another individual with whom the client maintains a relationship, if that individual is especially vulnerable or susceptible to being disadvantaged because of personal history, current mental status, or any condition that could reasonably be expected to place that individual at a disadvantage recognizing the power imbalance that exists or may exist between the counselor and that individual;~~

~~(8) exploiting for personal gain a:~~

~~(a) client;~~

~~(b) former client; or~~

~~(c) person who has a personal relationship with a client;~~

~~(9) failing to:~~

~~(a) establish and maintain professional boundaries with a client or former client;~~

~~(b) exercise professional discretion and impartial judgment required for the performance of professional activities, duties, and functions;~~

~~(c) provide impartial, objective, and informed services, recommendations, or opinions with respect to:~~

~~(i) custodial or parental rights;~~

~~(ii) divorce;~~

~~(iii) domestic relationships;~~

NOTICES OF PROPOSED RULES

- (iv) adoptions;
- (v) sanity;
- (vi) competency;
- (vii) mental health; or
- (viii) other determination concerning an individual's civil or legal rights;
- (d) maintain client records including records of assessment, treatment, progress notes, and billing information for a period of not less than ten years from the documented termination of services to the client;
- (e) provide client records in a reasonable time upon written request of the client, or the client's legal guardian;
- (f) obtain informed consent from the client or the client's legal guardian before taping, recording, or permitting third-party observations of client activities or records;
- (g) protect the confidences of persons named or identified in the client records;
- (h) abide by the American Mental Health Counselors Association Code of Ethics, 2020 edition, which is incorporated by reference;
- (i) follow the Model Standards of Practice for Child Custody Evaluation of the Association of Family and Conciliation Courts (AFCC) May 2006, which is incorporated by reference;
- (j) cooperate with the Division during an investigation;
- (10) if providing services remotely, failing to:
 - (a) practice according to professional standards of care in the delivery of services;
 - (b) protect the security of electronic confidential data and information; or
 - (c) appropriately store and dispose of electronic confidential data and information; and
- (11) violating:
 - (a) Section R156-60c-305a regarding supervisor experience; or
 - (b) Section R156-60c-305b as a supervisor or supervised individual.

KEY: licensing, counselors, mental health, clinical mental health counselor

Date of Last Change: ~~January 12, 2023~~ 2024

Notice of Continuation: September 5, 2019

Authorizing, and Implemented or Interpreted Law: 58-60-401; 58-1-106(1)(a); 58-1-202(1)(a)

NOTICE OF PROPOSED RULE

TYPE OF FILING: Amendment

Rule or Section Number:	R156-60d	Filing ID:	56217
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Agency Information

1. Department:	Commerce
Agency:	Professional Licensing
Building:	Heber M. Wells Building
Street address:	160 E 300 S
City, state and zip:	Salt Lake City, UT 84111-2316

Mailing address: PO Box 146741		
City, state and zip: Salt Lake City, UT 84114-6741		
Contact persons:		
Name:	Phone:	Email:
Jana Johansen	801-530-6628	janajohansen@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule or section catchline:

R156-60d. Substance Use Disorder Counselor Act Rule

3. Purpose of the new rule or reason for the change:

The Division of Professional Licensing (Division) in collaboration with the Substance Use Disorder Counselor Licensing Board makes this filing with the intent that the amendments being proposed incorporate changes due to S.B. 208 which passed in the 2023 General Session, merge provisions found in Rule R156-60, Mental Health Practice Act Rule, which is being recommended for repeal, and correct grammar and formatting errors.

4. Summary of the new rule or change:

Amendments to Section R156-60d-101 combine Sections R156-60d-103 and R156-60d-104 of this rule.

Amendment to Section R156-60d-102 adds definitions from the Mental Health Practice Act Rule (R156-60, being repealed) which will provide clarity and continuity for readers. This section also includes grammar, citation, and formatting corrections.

Amendments to Section R156-60d-302a correct grammar, and incorporate provisions found in Rule R156-60.

Amendment to Section R156-60d-302b adds provisions regarding experience being repealed with the Mental Health Practice Act Rule. In addition, grammar, formatting, and citation corrections are proposed.

Amendments to Section R156-60d-302d add sections of the Metal Health Practice Act Rule and clarify what constitutes the required suicide prevention course, as well as incorporating reenacted provisions from the repealed Rule R156-60.

Amendments to Section R156-60d-303 correct grammar and clarify requirements that the Board historically uses to determine reinstatement.

Amendments to Section R156-60d-304 add provisions regarding continuing education being repealed with the Mental Health Practice Act Rule.

Amendment to Section R156-60d-30t removes section that is incorporated into Section R156-60d-303.

Amendments to Section R156-60d-502 incorporate conduct found across the behavioral health professions for continuity. It also corrects formatting, grammar, and citations.

(EDITOR'S NOTE: The proposed repeal of Rule R156-60 is under ID 56209 in this issue, December 15, 2023, of the Bulletin.)

Public Hearing Information:

There will be a public hearing on 01/16/2024 at 9:00 AM at the Heber Wells Building, 160 E 300 S, Conference Room 474, Salt Lake City, UT. Also available via Google Meet (see below).

Google Meeting link:
meet.google.com/yfq-psko-xgt

Or join by phone:
(US) +1 304-691-0096
PIN: 605869246

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:

A) State budget:

The proposed changes are not expected to have any fiscal impact on state government revenues or expenditures.

The requested changes reflect current industry standards as approved by the Substance Use Disorder Counselor Licensing Board and will continue to ensure that the minimum required standards have been met.

B) Local governments:

The proposed changes are not expected to have any fiscal impact on local governments' revenues or expenditures.

This rule has been amended to provide technical, conforming, and stylistic changes in accordance with the Rulewriting Manual for Utah and current industry standards as approved by the Substance Use Disorder Counselor Licensing Board and will continue to ensure that the minimum required standards have been met.

None of these changes substantively changes the processes so there is no fiscal impact.

C) Small businesses ("small business" means a business employing 1-49 persons):

The proposed changes are not expected to have any fiscal impact on small businesses' revenues or expenditures.

This rule has been amended to provide technical, conforming, and stylistic changes in accordance with the Rulewriting Manual for Utah and current industry standards as approved by the Substance Use Disorder Counselor Licensing Board and will continue to ensure that the minimum required standards have been met.

None of these changes substantively change the processes so there is no fiscal impact.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):

The proposed changes are not expected to have any fiscal impact on non-small businesses' revenues or expenditures.

This rule has been amended to provide technical, conforming, and stylistic changes in accordance with the Rulewriting Manual for Utah and current industry standards as approved by the Substance Use Disorder Counselor Licensing Board and will continue to ensure that the minimum required standards have been met.

None of these changes substantively change the processes so there is no fiscal impact.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

The proposed changes are not expected to have any fiscal impact on affected persons.

This rule has been amended to provide technical, conforming, and stylistic changes in accordance with the Rulewriting Manual for Utah and current industry standards as approved by the Substance Use Disorder Counselor Licensing Board and will continue to ensure that the minimum required standards have been met.

None of these changes substantively change the processes for affected persons, so there is no fiscal impact.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):

As described above in Box 5(E) for other persons, the proposed changes are not expected to have any compliance costs for affected persons.

G) Regulatory Impact Summary Table (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 will be included in narratives above.)

Regulatory Impact Table			
Fiscal Cost	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$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
H) Department head comments on fiscal impact and approval of regulatory impact analysis:			
The Executive Director of the Department of Commerce, Margaret W. Busse, has reviewed and approved this fiscal analysis.			
The Division in collaboration with the Substance Use Disorder Counselor Licensing Board proposes these amendments in response to the statutory changes made in S.B. 208 (2023). Because Rule R156-60 is being repealed, these proposed amendments move provisions from Rule R156-60 into this rule as they apply to clinical mental health counselors, make nonsubstantive grammar and formatting changes to streamline and to update this rule, and to comply with the Rulewriting Manual for Utah.			
Small Businesses (less than 50 employees): The Division does not expect any foreseeable impact on small businesses in the practice of substance use disorder counselor in the state of Utah. The proposed amendments are to conform to the requirements of S.B. 208 (2023).			

The changes add provisions from the repeal of Rule R156-60, update this rule to encompass current statutory requirements and practices in the profession.

Further, the Division does not foresee any negative impact on small businesses since grammatical and formatting amendments are made to make this rule comport to the Rulewriting Manual for Utah.

Non-Small Businesses (50 or more employees):

The Division finds that the non-small businesses in the substance use disorder counselor industry in the state of Utah will not suffer a negative fiscal impact from the proposed rule amendments.

However, these amendments will have no expected fiscal impact for non-small businesses in Utah for the same rationale as described above for small businesses.

Further, any of these costs are either inestimable, for the reasons stated above, or there is no fiscal impact.

Citation Information

6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:

Section 58-60-501	Subsection 58-1-106(1)(a)	Subsection 58-1-202(1)(a)
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Incorporations by Reference Information

7. Incorporations by Reference:

A) This rule adds, updates, or removes the following title of materials incorporated by references:

Official Title of Materials Incorporated (from title page)	Deletes: NAADAC, the Association for Addiction Professionals NAADAC and NCC AP Code of Ethics
Publisher	Association for Addiction Professionals
Issue Date	October 9, 2016

B) This rule adds, updates, or removes the following title of materials incorporated by references:

Official Title of Materials Incorporated (from title page)	Adds: Code of Ethics of the NAADAC the Association for Addiction Professionals and the NCC AP
Publisher	Association for Addiction Professionals
Issue Date	January 1, 2021, edition

C) This rule adds, updates, or removes the following title of materials incorporated by references:

Official Title of Materials Incorporated (from title page)	Adds: Model Standards for Practice of Child Custody Evaluation
Publisher	Association of Family and Conciliation Courts (AFCC)
Issue Date	May 2006

Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:		01/17/2024
B) A public hearing (optional) will be held:		
Date:	Time:	Place (physical address or URL):
01/16/2024	9:00 AM	See information in Box 4 above.

9. This rule change MAY become effective on:	01/24/2024
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.	

Agency Authorization Information

Agency head or designee and title:	Mark B. Steinagel, Division Director	Date:	11/27/2023
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R156. Commerce, ~~Occupational and~~ Professional Licensing.**R156-60d. Substance Use Disorder Counselor Act Rule.****R156-60d-101. Title - Authority - Organization and Relationship to Rule R156-1.**

(1) This rule is known as the "Substance Use Disorder Counselor Act Rule."

(2) This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 60, Part 5, Substance Use Disorder Counselor Act.

(3) The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-107.

R156-60d-102. Definitions.

~~[In addition to the definitions regarding substance use disorder counseling practice in Title 58, Chapters 1 and 60, as used in Title 58, Chapters 1 and 60, the following rule definitions supplement the statutory definitions]~~ Terms used in this rule are defined in Title 58, Chapter 1, Division of Professional Licensing Act, and Title 58, Chapter 60, Part 5, Substance Use Disorder Counselor Act. In addition:

(1) "Accredited institution of higher education that meet division standards," as used in Subsections 58-60-506(2)(a)(i) and

(5)(a)(i), means an educational institution that has accreditation ~~[that is]~~ recognized by the Council for Higher Education Accreditation (CHEA).

(2) "ASAM" means the American Society of Addiction Medicine.

(3) "ASUDC" means an advanced substance use disorder counselor.

(4) "CASUDC" means a certified advanced substance use disorder counselor.

(5) "CASUDCI" means a certified advanced substance use disorder counselor intern.

(6) "CSUDC" means a certified substance use disorder counselor.

(7) "CSUDCI" means a certified substance use disorder counselor intern.

(8) "Client" or "patient" means an individual who, if competent, requests, or if not competent to request is lawfully provided professional services by a mental health therapist when the mental health therapist:

(a) agrees verbally or in writing to provide professional services to that individual; or

(b) without an overt agreement does in fact provide professional services to that individual.

([3]2) "DSM-[4]V or 5" is the approved diagnostic and statistical manual for mental disorders and means the following: ~~[means the Diagnostic Statistical Manual of Mental Health Disorders published by the American Psychiatric Association.]~~

(a) Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition: DSM-5-TR published by the American Psychiatric Association;

(b) International Classification of Diseases, Tenth Revision, Clinical Modification (ICD-10-CM) for Physicians, Professional Edition published by the American Medical Association; or

(c) International Classification of Diseases, Tenth Revision, Clinical Modification (ICD-10-CM): The Complete Official Draft Code Set published by the American Medical Association.

(10) "Human growth and development," as used in Subsection R156-60d-302a(1)(a), means a course at a college or university accredited by CHEA, that includes an emphasis on human growth and development across the lifespan, from conception to death.

([4]11) "IC&RC" means the International Certification and Reciprocity Consortium.

(12) "Independent of control," as used in Subsection R156-60d-302b(3)(e), means not being employed by the supervisee, or by an agency owned in total or in part by the supervisee, or that the supervisee has any controlling interest.

([5]13) "Initial assessment" means the procedure of gathering psycho-social information, including the application of the Addiction Severity Index, to recommend a level of treatment and to assist the mental health therapist supervisor in the information collection process, and may include a referral to an appropriate treatment program.

([6]14) "NAADAC" means the Association for Addiction Professionals.

(15) "On-the-job training program," as used in Subsection 58-1-307(1)(c) means a program that:

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

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

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

(d) the individual is an employee of a public or private mental health agency, in-patient or out-patient hospital, educational institution, or government agency, and is providing clinical mental health services; and

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

([7]16) "Prerequisite courses," as used in Subsections 58-60-506(2)(a)(iii) and (5)(a)(iii), means courses completed before qualifying for licensure.

([8]17) "SASSI" means Substance Abuse Subtle Screening Inventory.

([9]18) "Screening," as used in Subsections 58-60-502(9)(b) and (10)(b)(i), means a brief interview conducted in person or by ~~telephone~~ other electronic means used to determine ~~if there is a~~ the potential of a substance abuse problem. ~~When~~ If a potential problem is identified, the screening may include a referral for an initial assessment or a substance use disorder evaluation. The screening may also include a preliminary ASAM Criteria recommendation ~~in order~~ to expedite the subsequent assessment and evaluation process. Screening instruments such as the SASSI may be included in the screening process.

([14]19) "Substance use disorder education program," as used in Subsections 58-60-506(2)(b) and (5)(b), means college or university coursework at an accredited institution.

([10]20) "Substance use disorder evaluation" means the process used to interpret information gathered from an initial assessment, other instruments as needed, and a face to face interview by a licensed mental health therapist ~~in order~~ to determine if an individual meets the DSM-~~[4]~~V or 5 criteria for substance abuse or dependence and is in need of treatment. If the need for treatment is determined, the substance use disorder evaluation process includes the determination of a DSM-~~[4]~~V or 5 diagnosis and the determination of an individualized treatment plan.

(21) "SUDC" means a substance use disorder counselor.

(22) "Supervised experience," as used in Subsections 58-60-506(2)(c) and (5)(c), means experience gathered under the general supervision of a license holder meeting the requirements of Section 58-60-508.

(23) "Supervisor Verification form" means the form provided by the Division to document who is providing supervision to a supervised individual, which at a minimum includes:

(a) name and license number of the individual;

(b) name and license number of the supervisor; and

(c) supervised individuals place of employment.

([12]24) "Unprofessional conduct", as defined in Title 58 Chapter[s] 1, Division of Professional Licensing Act, and Title 58, Chapter 60, Mental Health Professional Practice Act, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-60d-502.[

R156-60d-103. Authority—Purpose.

This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 60, Part 5.

R156-60d-104. Organization—Relationship to Rule R156-1.

The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-107.[

R156-60d-302a. Qualifications for Licensure - Education Requirements.

(1) ~~[In accordance with]~~Under Subsections 58-60-506(2)(a)(iii) and (5)(a)(iii), ~~[two]~~prerequisite courses ~~[shall be completed at an accredited institution and]~~shall cover the following subjects:

(a) human growth development, completed at an accredited institution~~[across the lifespan];~~[and]

(b) general psychology, completed at an accredited institution; and

(c) a two hour suicide prevention course as described in Section R156-60d-302d.

(2) ~~[In accordance with]~~Under Subsection 58-60-506(5)(a)(ii), completion of the equivalent of an associate's degree includes not less than 90 quarter or 60 semester credit hours of course work from accredited institutions of higher education that have accreditation recognized by ~~[the Council for Higher Education Accreditation]~~[CHEA].

R156-60d-302b. Qualifications for Licensure - Supervised Experience Requirements.

(1) ~~[In accordance with]~~Under Subsection 58-60-506(2)(c), the 4,000 hours of supervised experience ~~[in substance use disorder treatment required to qualify an applicant for the]~~for an advanced substance use disorder counselor license shall ~~[consist of providing substance use disorder counseling services as defined in]~~meet the requirements of Subsection 58-60-502(9).

(2) ~~[In accordance with]~~Under Subsection 58-60-506(5)(c), the 2,000 hours of supervised experience ~~[in substance use disorder treatment required to qualify an applicant for the]~~for a substance use disorder counselor license shall ~~[consist of providing substance use disorder counseling services as defined in]~~meet the requirements of Subsection 58-60-502(10).

(3) ~~[In accordance with]~~Under Subsections 58-60-506(2)(c)(i) and 58-60-506(5)(c)(i), supervised experience shall be ~~[completed]~~obtained:

(a) under direct supervision as defined in ~~[Section]~~Subsection 58-60-502(3);~~[and R156-60-102(4), by a supervisor who meets the requirements of Section 58-60-508 and Section R156-60-302; and~~

(b) in accordance with Section R156-60-302, which requires a written supervision contract and establishes certain duties and responsibilities for the supervisor and supervisee.]

(b) while the applicant is a W-2 employee providing substance use disorder treatment at one of the following facilities:

(i) mental health agency;

(ii) in-patient or out-patient hospital;

(iii) educational institution;

(iv) non-profit organization; or

(v) government agency;

(c) in accordance with the supervised training requirements of Section R156-60d-302b;

(d) under a supervisor who meets the requirements of Section 58-60-508 and Section R156-60d-302b;

(e) while maintaining a supervisor-supervisee relationship in which the supervisor is independent of control by the supervised individual, and that the ability of the supervisor to supervise and direct the practice of that individual is not compromised; and

(f) in not less than 2,000 hours per 12 month period.

(4) Notwithstanding Subsection (3)(b), an individual may qualify for licensure when:

(a) exempt under Subsection 58-1-307(1)(b); or

(b) they completed training in another jurisdiction while:

(i) licensed as the equivalent of a SUDC; or

(ii) engaged in the practice of providing substance use disorder treatment while not required to be license.

(5) The exemption in Subsection 58-1-307(1)(b) does not permit an applicant to engage in the required hours of substance use disorder treatment training without first becoming licensed as a SUDC.

R156-60d-302c. Qualifications for Licensure - Examination Requirements.

~~[In accordance with]~~ Under Subsections 58-60-506(1)(~~e~~)d) and 58-60-115(5)(b), the following examinations ~~[required is]~~ will meet this requirement:

(1) for ~~[licensure as a]~~certified advanced substance use disorder counselor ~~[and an]~~or advanced substance use disorder counselor:

(a) ~~[the written NAADAC National Certification Exam Level II or MAC with a minimum criterion score set by NAADAC; or]~~National Certified Addiction Counselor, Level II (NCACII) administered by the National Certification Commissions for Addiction Professionals (NCC AP);

(b) Master Addiction Counselor (MAC) administered by the NCC AP; or

~~[(b)c] [the written ICRC]~~Advanced Alcohol and Drug Counselor (AADC) ~~[Examination with a minimum criterion score as set]~~administered by the IC&RC. ~~[by ICRC; and]~~

(2) for ~~[licensure as a]~~certified substance use disorder counselor or substance use disorder counselor:

(a) ~~[the written NAADAC National Certification Exam Levels I, II or MAC with a minimum criterion score set by NAADAC; or]~~National Certified Addiction Counselor, Level I (NCACI) administered by the NCC AP;

(b) National Certified Addiction Counselor, Level II (NCACII) administered by the NCC AP;

(c) Master Addiction Counselor (MAC) administered by the NCC AP;

~~[(b)d] [the written ICRC]~~Alcohol and Drug Counselor (ADC) administered by the International Certification & Reciprocity Consortium (IC&RC); or

(e) Advanced Alcohol and Drug Counselor (AADC) ~~[Examination with a minimum criterion score as set by ICRC]~~administered by the IC&RC.

R156-60d-302d. Qualifications for Licensure - Suicide Prevention Course.

(1) Under Subsections 58-60-506(2)(a)(iii) and (5)(a)(iii), the two hour suicide prevention course required to obtain substance use disorder counselor or advanced substance use disorder counselor licensure shall be:

(a) approved, sponsored, or conducted by one of the following:

(i) accredited college or university;

(ii) county, state, or federal agency;

(iii) professional association, or similar body, involved in clinical mental health therapy or substance use disorder treatment; or

(iv) mental health agency that provides clinical mental health services or substance use disorder treatment;

(b) relevant to mental health, substance use, and suicide prevention, consistent with the laws of this state, and include one or more of the following components:

(i) suicide concepts and facts;

(ii) suicide risk assessment, crisis intervention, and first aid;

(iii) evidence-based intervention for suicide risk;

(iv) continuity of care and follow-up services for suicide risk; and

(v) therapeutic alliances for intervention in suicide risk;

(c) completed in not less than 50-minute blocks of time in one of the following formats:

(i) classroom lecture and discussion;

(ii) workshops;

(iii) synchronous webinars;

(iv) asynchronous online self-pace modules;

(v) case study reviews; or

(vi) simulations; and

(d) completed within two years of application.

(2) The course provider shall provide certification of:

(a) course attendance;

(b) hours completed;

(c) name of provider; and

(d) date of completion.

(3) An applicant for licensure shall submit certification of course completion, within the preceding two years, to the Division as a prerequisite for licensure.

R156-60d-303. Renewal and Reinstatement of License. ~~[Cycle-- Procedures.]~~

(1) ~~[In accordance with]~~ Under Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to ~~[licensees]~~all licenses under Title 58, Chapter 60, Part 5, Substance Use Disorder Counselor Act, is established ~~[by rule]~~in S~~[ub]~~section R156-1-308a~~[(4)]~~.

(2) Advanced substance use disorder counselor and substance use disorder counselor renewal~~[Renewal]~~ and reinstatement procedures shall be in accordance with Sections R156-1-308~~[e]~~a through R156-1-308l, except as provided in Subsection (3).

(3) Under Subsection 58-1-308(6)(a) and Section R156-1-308g, an applicant for reinstatement of licensure as a substance use disorder counselor or an advanced substance use disorder counselor whose license has expired over five years, shall upon request:

(a) meet with the Board to evaluate the applicant's ability to safely and competently practice substance use disorder treatment; and

(b) if recommended by the Board, complete one or more of the following:

(i) establish a plan of supervision under an approved supervisor, which may include up to 2,000 hours of substance use disorder treatment training as an SUDC before qualifying for reinstatement of the ASUDC license;

(ii) retake and pass an examination required in Section R156-60d-302c; or

(iii) complete up to 40 hours of continuing education in subjects determined by the Board.

R156-60d-304. Continuing Education.

~~[In accordance with]~~(1) Under Section 58-60-105, the continuing ~~[professional]~~education (CE) requirements for each two-year renewal cycle beginning October 1 of each even-numbered year,

~~for an individual[~~substance use disorder counselor~~] licensed under Title 58, Chapter 60, Part 5[~~are established in Section R156-60-405~~]. Substance Use Disorder Counselor Licensing Act, shall:~~

- ~~(a) be completed by an individual as follows:~~
 - ~~(i) 20 hours for CSUDC;~~
 - ~~(ii) 40 hours for SUDC;~~
 - ~~(iii) 20 hours for CASUDC; or~~
 - ~~(iv) 40 hours for ASUDC;~~
- ~~(b) include:~~
 - ~~(i) six hours in ethics of substance use disorder treatment, law, or technology; and~~
 - ~~(ii) two hours in suicide prevention, this course shall meet the requirements of Section R156-60d-302d.~~
- ~~(2) An individual who completes more than the required number of CE hours during a two-year renewal cycle may carry over excess hours to the next two-year renewal cycle, as follows:~~
 - ~~(a) five hours for a CSUDC or CASUDC; or~~
 - ~~(b) ten hours for a SUDC or ASUDC.~~
- ~~(3) CE shall be:~~
 - ~~(a) approved, conducted, or under the sponsorship of one of the following:~~
 - ~~(i) accredited college or university;~~
 - ~~(ii) county, state, or federal agency;~~
 - ~~(iii) professional association, or similar body, involved in clinical mental health therapy or substance use disorder treatment; or~~
 - ~~(iv) mental health agency that provides clinical mental health services or substance use disorder treatment;~~
 - ~~(b) completed in not less than 50-minute blocks of time in one of the following formats:~~
 - ~~(i) college or university lecture and discussion up to a maximum of:~~
 - ~~(A) three CE hours per semester hour; or~~
 - ~~(B) 1.5 CE hours per quarter hour;~~
 - ~~(ii) conference;~~
 - ~~(iii) lecture or instruction up to a maximum of two times per course, up to a maximum of:~~
 - ~~(A) five hours for a CSUDC or CASUDC; or~~
 - ~~(B) ten hours for a SUDC or ASUDC;~~
 - ~~(iv) seminar;~~
 - ~~(v) training session;~~
 - ~~(vi) synchronous distance learning course that is clearly documented as real-time and interactive;~~
 - ~~(vii) asynchronous distance learning course that is not real-time and interactive, up to a maximum of:~~
 - ~~(A) eight hours for a CSUDC or CASUDC; or~~
 - ~~(B) 15 hours for a SUDC or ASUDC;~~
 - ~~(viii) specialty certification;~~
 - ~~(ix) direct supervision of a CSUDC or CASUDC completing the experience requirements for licensure, up to a maximum of ten hours for a SUDC or ASUDC; or~~
 - ~~(x) volunteer service on a board, committee, or in a leadership role in any state, national, or international organization for the development and improvement of the licensee's profession; one CE hour may be counted as a regular credit, ethics, law, or technology credit, up to a maximum of six CE hours during each two-year period;~~
 - ~~(c) prepared and presented by individuals who are qualified by education, training, and experience to provide CE;~~
 - ~~(d) relevant to the licensee's scope of practice; and~~
 - ~~(e) verified by a certificate of course completion that shall include:~~
 - ~~(i) name of the attendee;~~
 - ~~(ii) name of course provider;~~

- ~~(iii) name of instructor;~~
- ~~(iv) date of the course;~~
- ~~(v) title of the course;~~
- ~~(vi) number of CE hours;~~
- ~~(vii) course objectives; and~~
- ~~(viii) type of CE, for example, seminar, real-time interactive, distance learning, teaching.~~
- ~~(4) An individual shall maintain adequate documentation as proof of compliance with this section for a period of two years after the end of the renewal cycle for which the CE is due.~~
- ~~(5) An individual may not carry forward any CE hours received before a granted license, including professional upgrades.~~
- ~~(6) CE hours shall be decreased proportionately according to the date of licensure within the two-year renewal cycle.~~
- ~~(7) The Division may defer or waive CE requirements in accordance with Section R156-1-308d.[~~

~~R156-60d-307. License Reinstatement—Requirements.~~

~~In accordance with Subsection 58-1-308(5) and subject to Section R156-1-308g, an applicant for reinstatement of a license more than two years after the date the license expired shall:~~

- ~~(1) meet with the Board upon request for the purpose of evaluating the applicant's current ability to engage safely and competently in practice as a substance use disorder counselor and to make a determination of any additional education, experience or examination requirements that will be required before reinstatement;~~
- ~~(2) pass the examination required in Section R156-60d-302e if it is determined necessary by the Board to demonstrate the applicant's ability to engage safely and competently in practice as a substance use disorder counselor; and~~
- ~~(3) complete at least 40 hours of continuing education in subjects determined by the Board as necessary to ensure the applicant's ability to engage safely and competently in practice as a substance use disorder counselor.]~~

~~R156-60d-502. Unprofessional Conduct.~~

~~["Unprofessional conduct" includes:~~

- ~~(1) violating of any provision of the NAADAC, the Association for Addiction Professionals (October 9, 2016) NAADAC and NCC AP Code of Ethics, which is hereby incorporated by reference;~~
- ~~(2) violating any provision applicable to a supervisor under Section 58-60-508 or Section R156-60-302;~~
- ~~(3) violating any provision applicable to a supervisee under Section R156-60-302; or~~
- ~~(4) directing one's mental health therapist supervisor to engage in a practice that would violate any statute, rule, or generally accepted professional or ethical standard of the supervisor's profession.]~~

~~Under Subsection 58-60-110(2), "unprofessional conduct" includes:~~

- ~~(1) using the abbreviated title of:~~
 - ~~(a) ASUDC unless licensed as an advanced substance use disorder counselor;~~
 - ~~(b) CASUDC unless licensed as a certified advanced substance use disorder counselor;~~
 - ~~(c) CASUDC unless licensed as a certified advanced substance use disorder counselor intern;~~
 - ~~(d) CSUDCI unless licensed as a certified substance use disorder counselor intern;~~
 - ~~(e) CSUDC unless licensed as a substance use disorder counselor;~~

(f) SUDC unless licensed as a substance use disorder counselor;

(2) acting as a supervisor or accepting supervision from a supervisor without complying with or ensuring compliance with Subsection 58-60-502(10) and Section R156-60d-302b;

(3) directing one's supervisor to engage in a practice that would violate any statute, rule, or generally accepted professional or ethical standard of the supervisor's profession;

(4) engaging in the supervised practice of substance use disorder treatment;

(a) as a licensed CASUDC or CSUDC unless:

(i) the licensee has completed a substance use disorder education program from an accredited college or university; and

(ii) the scope of practice is within the licensee's competency, abilities, and education;

(b) while not in compliance with Section R156-60d-302b;

(5) engaging in or aiding or abetting;

(a) conduct or practices that are dishonest, deceptive, or fraudulent;

(b) deceptive or fraudulent billing practices;

(c) sexual harassment or any conduct that is exploitive or abusive with respect to a student, trainee, employee, or colleague with whom the licensee has supervisory or management responsibility; or

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

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

(7) engaging in sexual activities or sexual contact with a client, former client, or another individual with whom the client maintains a close personal relationship with or without the client's consent;

(8) exploiting for personal gain a:

(a) client;

(b) former client; or

(c) person who has a personal relationship with a client;

(9) failing to:

(a) establish and maintain professional boundaries with a client or former client;

(b) exercise professional discretion and impartial judgment required for the performance of professional activities, duties, and functions;

(c) provide impartial, objective, and informed services, recommendations, or opinions with respect to:

(i) custodial or parental rights;

(ii) divorce;

(iii) domestic relationships;

(iv) adoptions;

(v) sanity;

(vi) competency;

(vii) mental health; or

(viii) other determination concerning an individual's civil or legal rights;

(d) maintain client records including records of assessment, treatment, progress notes, and billing information for a period of not less than ten years from the documented termination of services to the client;

(e) provide client records in a reasonable time upon written request of the client, or the client's legal guardian;

(f) obtain informed consent from the client or the client's legal guardian before taping, recording, or permitting third-party observations of client activities or records;

(g) protect the confidences of persons named or identified in the client records;

(h) abide by the Code of Ethics of the NAADAC, the Association for Addiction Professionals and the NCC AP, January 1, 2021 edition, which is incorporated by reference;

(i) follow the Model Standards of Practice for Child Custody Evaluation of the Association of Family and Conciliation Courts (AFCC) May 2006, which is incorporated by reference;

(j) cooperate with the Division during an investigation;

(10) if providing services remotely, failing to:

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

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

(c) appropriately store and dispose of electronic confidential data and information; and

(11) violating Section R156-60d-302b regarding supervised experience.

KEY: licensing, substance use disorder counselors

Date of Last Change: ~~November 10, 2020~~ 2024

Notice of Continuation: July 14, 2020

Authorizing, and Implemented or Interpreted Law: 58-60-501; 58-1-106(1)(a); 58-1-202(1)(a)

NOTICE OF PROPOSED RULE

TYPE OF FILING: Amendment

Rule or Section Number:	R356-6	Filing ID: 56220
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Agency Information

1. Department:	Governor	
Agency:	Criminal and Juvenile Justice (State Commission on)	
Room number:	E330	
Building:	Senate Building (at State Capitol)	
Street address:	350 N State Street	
City, state and zip:	Salt Lake City, UT 84114	
Contact persons:		
Name:	Phone:	Email:
Angelo Perillo	801-538-1047	aperillo@utah.gov
Ken Matthews	801-538-1058	kmatthews@utah.gov

Please address questions regarding information on this notice to the persons listed above.

General Information

2. Rule or section catchline:

R356-6. Electronic Meetings

3. Purpose of the new rule or reason for the change:

The purpose of these amendments is to ensure that all of the public bodies created under the Commission on Criminal and Juvenile Justice are subject to the same requirements for conducting an electronic meeting.

Currently, this rule only applies to those public bodies created in Title 63M, Chapter 7. These changes would also make this rule applicable to the public bodies created in Section 36-29-111, Section 64-13e-105, Section 77-37-5, Section 78A-10a-302, Section 78A-10a-402, and Section 78B-22-401.

4. Summary of the new rule or change:

The proposed changes to this rule add definitions in conformity with those found in Rule R356-7, including the definition of a designee and a representative.

It also adds a definition of what it means to appear "electronically". These definitions are then applied consistently throughout this rule which has resulted in minor changes. However, the substantive provisions of this rule have not changed.

Fiscal Information**5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:****A) State budget:**

This program will create no cost burden or savings for the state budget. The new language will not change the way electronic meetings are being conducted today. It will not add any additional time or tasks that could lead to new costs.

B) Local governments:

This program will create no cost burden or savings for local governments. The new language will not change the way electronic meetings are being conducted today. It will not add any additional time or tasks that could lead to new costs.

C) Small businesses ("small business" means a business employing 1-49 persons):

This program will create no cost burden or savings for small businesses. The new language will not change the way electronic meetings are being conducted today. It will not add any additional time or tasks that could lead to new costs.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):

This program will create no cost burden or savings for non-small businesses. The new language will not change the way electronic meetings are being conducted today. It will not add any additional time or tasks that could lead to new costs.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

This program will create no cost burden or savings for other persons. The new language will not change the way electronic meetings are being conducted today. It will not add any additional time or tasks that could lead to new costs.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):

There should be no costs or saving for any affected persons as a result of this rule. The new language will not change the way electronic meetings are being conducted today. It will not add any additional time or tasks that could lead to new costs.

G) Regulatory Impact Summary Table (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 will be included in narratives above.)**Regulatory Impact Table**

Fiscal Cost	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$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 Benefits	Fiscal	\$0	\$0	\$0
H) Department head comments on fiscal impact and approval of regulatory impact analysis:				
The Executive Director of the State Commission on Criminal and Juvenile Justice, Tom Ross, has reviewed and approved this fiscal analysis.				

Citation Information

6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:		
Section 52-4-202		

Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	01/17/2024

9. This rule change MAY become effective on:	01/24/2024
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.	

Agency Authorization Information

Agency head or designee and title:	Tom Ross, Executive Director	Date:	11/28/2023
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R356. Governor, Criminal and Juvenile Justice (State Commission on).**R356-6. Electronic Meetings.****R356-6-1. Authority.**

~~[(4)]~~ This rule is authorized by Section 52-4-207 which requires ~~[any] a public body [that convenes or conducts] which holds an electronic meeting to [establish written rules or procedures for such meetings] adopt a resolution, rule, or ordinance governing the use of electronic meetings.~~

~~[(2)]~~ This rule is also authorized by the Utah Administrative Rulemaking Act at Section 63G-3-201 which requires an agency to make rules when agency action:

- ~~(a) authorizes, requires, or prohibits an action;~~
- ~~(b) provides or prohibits a material benefit;~~
- ~~(c) applies to a class of persons or another agency; and~~
- ~~(d) is explicitly or implicitly authorized by statute.]~~

R356-6-2. Purpose.

The purpose of this rule is to establish procedures for conducting an electronic meeting of any public body ~~[created] established in [Title 63M, Chapter 7, Criminal Justice and Substance Abuse];~~

- ~~(1) Section 36-29-111;~~

~~(2) Title 63M, Chapter 7, Criminal Justice and Substance Abuse;~~

- ~~(3) Section 64-13e-105;~~
- ~~(4) Section 77-37-5;~~
- ~~(5) Section 78A-10a-302;~~
- ~~(6) Section 78A-10a-402; and~~
- ~~(7) Section 78B-22-401.~~

R356-6-3. Definitions.

- ~~(1) Terms used in this rule are found in Section 52-4-103.~~
- ~~(2) In addition:~~
 - ~~(a) "commission" means the Commission on Criminal and Juvenile Justice, established in Section 63M-7-201;~~
 - ~~(b) "designee" means an individual appointed by a member to represent the member when the member cannot appear at meetings of a public body;~~
 - ~~(c) "electronically" means to attend a meeting through the use of:~~
 - ~~(i) an online medium that allows for audio and video interactions; or~~
 - ~~(ii) a telecommunications medium that allows for audio interactions; and~~
 - ~~(d) "representative" means an individual appointed by an entity to represent that entity on a public body.~~

[R356-6-3] R356-6-4. Procedures.

~~(1) A public body described in this rule may hold an open and public meeting where [members of the public body or the general public are allowed to] individuals may participate electronically[or telephonically].~~

~~(2) When an electronic meeting is scheduled, the public notice required by Section 52-4-202 shall describe:~~

~~(a) [the electronic or telephonic method by which members of the public body or the general public] how individuals may participate electronically; and~~

~~(b) the anchor location where [members of the public body or the general public] individuals may attend, monitor, and participate in the open portions of the meeting.~~

~~(3)[(a)] The anchor location is the physical location from which the electronic meeting originates or from which the participants are connected.~~

~~(b)] The anchor location shall have sufficient space and facilities so [that interested persons and the public] anyone may attend, monitor, and participate in the open portions of the meeting.~~

~~(4) At the commencement of the meeting the chair shall identify [for] on the record [those] the members, designees, and representatives who are appearing [telephonically or] electronically.~~

~~(5) A member, designee, or representative who appears electronically [or telephonically] shall be counted as present for purposes of determining a quorum.~~

~~(6)(a) A member, designee, or representative who appears electronically [or telephonically] may fully participate and vote on any matter before the public body.~~

~~(b) Votes by members, designees, or representatives who are appearing electronically [or telephonically] shall be confirmed by the chair.~~

KEY: electronic meetings, procedures

Date of Last Change: 2024 [March 24, 2023]

Authorizing, and Implemented or Interpreted Law: 52-4-207

NOTICE OF PROPOSED RULE		
TYPE OF FILING: Amendment		
Rule or Section Number:	R357-3	Filing ID: 56228

Agency Information

1. Department:	Governor	
Agency:	Economic Opportunity	
Room number:	Suite 300	
Building:	World Trade Center	
Street address:	60 E South Temple	
City, state and zip:	Salt Lake City, UT 84111	
Contact persons:		
Name:	Phone:	Email:
Dane Ishihara	801-792-8764	dishihara@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule or section catchline:
R357-3. Economic Development Tax Increment Financing Rule
3. Purpose of the new rule or reason for the change:
The purpose of this rule filing is to establish policies to implement Executive Order No. 2023-09, Requiring Service Hours for Economic Development Incentives and makes technical changes.
4. Summary of the new rule or change:
This rule filing: 1) defines corporate citizenry plan; 2) establishes if a company has had a prior agreement with the office, execution of a company's corporate citizenry plan may be evaluated; and 3) establishes failure to execute a corporate citizenry plan does not prohibit a company from receiving an incentive.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
There is no anticipated cost or savings to the state budget, as this rule is codifying policies to implement Executive Order No. 2023-09.

B) Local governments:

This rule change is not expected to have a fiscal impact on local governments' revenues or expenditures. This rule change is codifying policies to implement Executive Order No. 2023-09.

C) Small businesses ("small business" means a business employing 1-49 persons):

This rule change will not have a fiscal impact on small businesses. This rule is procedural in nature and participation in the program is optional.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):

The proposed rule changes do not have a fiscal impact on non-small businesses, nor will a service be required of them to implement the amendments.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

There is no new 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.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):

There are no compliance costs for affected persons. The changes simply add clarification to requirements and policy with no fiscal impact on other entities.

G) Regulatory Impact Summary Table (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 will be included in narratives above.)

Regulatory Impact Table			
Fiscal Cost	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0

Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$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
H) Department head comments on fiscal impact and approval of regulatory impact analysis:			
The Executive Director of the Governor's Office of Economic Opportunity, Ryan Starks, has reviewed and approved this regulatory impact analysis.			

Citation Information

6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:		
Section 63N-2-110		

Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	01/17/2024

9. This rule change MAY become effective on:	01/24/2024
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.	

Agency Authorization Information

Agency head or designee and title:	Ryan Starks, Executive Director	Date:	11/30/2023
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R357. Governor, Economic Opportunity.**R357-3. Economic Development Tax Increment Financing Rule.**
R357-3-101. Title.

This rule is known as the "Economic Development Tax Increment Financing Rule."

R357-3-102. Definitions.

In addition to the definitions in Sections 63N-1a-102 and 63N-2-103 the following terms are defined:

(1) "Apportionment" means a reduction in new state revenues in the period being assessed by the percentage of project employee wages against total employee wages.

(2) "Corporate citizenry plan" includes:

(a) applicants plan on how they will be involved with local communities through beneficial acts of charity, which may include: direct service, social entrepreneurship and responsibility, community-engaged learning and research, philanthropy, community organizing and activism or other supportive policies and initiatives which provide a positive environment of wellbeing, growth and learning; and

(b) a commitment to attain at least 20 service hours per high paying job, per year during the incentive, within the state.

([2]3) "High paying job" includes adjusted wage percentages in counties experiencing economic distress as outlined in Section R357-3-108.

([3]4) "Leisure and Hospitality Industry" means businesses, as determined by the office, that relate to service-providing industries consisting of:

(a) arts, entertainment, and recreation under NAICS code 71;

(b) accommodation and food services under NAICS code 72; and

(c) resort, resort building, or resort boundary as defined in Section 32B-8-102.

([4]5) "New commercial project" does not include retail operations.

([5]6) "Retail operations" means a project with a physical location from which the general public may directly purchase merchandise or direct services and does not include distribution centers, the corporate functions associated with retailing, or other activities associated with retailing that may be accomplished from any physical location or that are not dependent on proximity to end consumers for retail sales.

R357-3-103. Authority.

~~[This rule is adopted by the office]~~ The office adopts this rule under the authority of Subsection 63N-2-104(2).

R357-3-104. Application Content.

(1) To determine a company's eligibility for an Economic Development Tax Increment Financing Incentive the company shall submit:

- (a) financial documents for the prior three years including:
 - (i) balance sheets;
 - (ii) income statements; and
 - (iii) cash flow statements; or
- (b) other documentation demonstrating that the company has the ability to finance the project;
- (c) corporate structure;
- (d) workforce data;
- (e) corporate citizenry plan;

NOTICES OF PROPOSED RULES

- (f) plan to hire Utah employees;
- (g) forecasted new state revenue associated with the new commercial project;
- (h) forecasted incremental job creation associated with the new commercial project; and
- (i) forecasted wages associated with the new commercial project.

(2) To determine a company's eligibility for an Economic Development Tax Increment Financing Incentive the office may review the company's:

- (a) incentive offers from other states;
 - (b) remote work options for the project;
 - (c) market analysis;
 - (d) proof of fundraising;
 - (e) tax filings;
 - (f) reshoring plans; and
 - (g) other information as determined by GO Utah.
- (3) GO Utah may deny an application for any reason.

(3) Information provided by the business entity is subject to the Government Records Access and Management Act. The business entity has the option to designate ~~whether~~ whether the information provided is private or protected subject to Sections 63G-2-302 and 63G-2-305.

R357-3-105. Factors to Be Considered in Authorizing an Economic Development Tax Credit Award.

(1) The amount and duration of a tax credit award shall be determined on a case-by-case basis. The factors that the office may ~~be~~ consider ~~ed~~ include:

- (a) whether the company is projecting positive long-term growth;
- (b) whether the company is part of a targeted industry;
- (c) the overall benefit to the state from the new commercial project;
- (d) the uniqueness of the economic opportunity;
- (e) the economic environment at the time of the new commercial project or company applies including:
 - (i) the job leakage to other counties;
 - (ii) the relative value of a job; and
 - (iii) the underemployment rate;
- (f) the location of the new commercial project;
- (g) the quality of financing the company has received;
- (h) comparison to previously incented projects in size, scope, and industry; ~~and~~

(i) service hours completed per high paying job under a prior agreement with the office; and

(j) other factors as reasonably determined by the administrator.

(2) The factors for an award higher than 30% of new state revenues for a project located in a county of the third-class, or a municipality with a population of 10,000 or less located within a county of the second class and that is experiencing economic hardship are:

- (a) factors in Subsection R357-3-105(1);
- (b) evidence of significant financial support of the local community for the project;
- (c)(i) capital expenditures of at least \$500,000,000 for the new commercial project;
- (ii) the new capital project is in targeted industry as defined by the office; or
- (iii) local taxing entities are offering a tax increment agreement of at least 75% and 25 years of property tax rebates;

(d)(i) the new capital project creates at least 2,000 new high-wage jobs; and

(ii) the new capital project is in targeted industry as defined by the office;

(iii) the average wages for the new high paying jobs are at least 300% of the average county wage; or

(iv) local taxing entities are offering a tax increment deal over 75% and 25 years for property tax rebates;

(3) A new commercial project within the leisure and hospitality industry sector, located in a county of the fifth or sixth class may receive an award up to 50% of new state revenues over 20 years if the project:

- (a) has capital expenditure of at least \$10,000,000;
- (b) creates a significant number of new high paying jobs;
- (c) is of strategic importance to the state, county and city;
- (d) is adjacent to a unique, high visitation tourist area; and
- (e) location would otherwise be underserved in leisure and hospitality without being provided an incentive.

(4) If ~~a project has not been approved by the GO Utah Board~~ the Board has not approved a project within six months of the submission the company must submit an updated application.

(5) The Executive Director after consultation with the GO Utah Board may:

- (a) approve or deny an application; and
- (b) determine terms and conditions of an approved application.

R357-3-106. Economic Development Tax Credit Process.

(1) Annual tax credits shall be based on ~~actual~~ incremental taxes paid by the business entity or withheld on behalf of employees of a new commercial project.

(2)(a) GO Utah shall propose a tax credit structure based on the factors set forth in this rule in a combination GO Utah deems the most effective and beneficial in weighing the benefits of the ~~S~~ state, local community, and company.

(~~a~~) b GO Utah shall propose the tax credit terms and structure to the Board before making a final offer to the business entity.

(3) If the Executive Director approves an Economic Development Tax Credit, GO Utah shall provide a tax credit offer letter to a business entity that includes:

- (a) the proposed terms of the Economic Development Tax Credit, including the maximum amount of aggregate annual tax credits and the time period over which the tax credits may be claimed;
- (b) a statement that the company must demonstrate sufficient growth and supply; and

(c) documentation that will be required each incentive year to claim a tax credit for the following tax year.

(4) If the applicant intends to accept the incentive offer, it shall counter-execute the tax credit offer letter.

(5) If the Executive Director denies an application for an Economic Development Tax Credit, GO Utah shall provide a letter to the business entity that includes:

- (a) notice of the application denial;
- (b) reason for denial; and
- (c) notice that if the business entity makes changes to the proposed new commercial project, they may reapply for a tax credit ~~(the business entity can reapply for a tax credit if changes to the proposed new commercial project are made)~~.

(6) GO Utah ~~will~~ shall establish a baseline with the company that consists of the count of full-time employees and state

revenue reflective of presence in the state before the Board approval date. A [B] baseline must be established before awarding a tax credit.

(7) A company with an active contract, who desires a tax credit, must provide an annual report for the incentive year in the format and method as directed by GO Utah, with a level of accuracy comparable with information GO Utah obtains from the Department of Workforce Services and the Tax Commission, that at a minimum must contain:

(a) a list of individuals in Utah that received compensation at the company or project with their position, start date, termination date, hours paid, wages paid, benefits paid and employer withholding taxes paid or an aggregate list that provides qualification and legislative reporting required for Section 63N-2-106, as determined GO Utah[-];

(b) the requested amount of tax revenue to be rebated from withholding, sales and use, vendor paid sales tax and income tax verified as paid, remitted and receipted to the state[-]; and

(c) a current authorization to disclose from the Utah State Tax Commission from the baseline period to three years after the end date of the contract.

(8) The office may cause an apportionment for the following reasons:

(a) a business entity's project scope is to create or develop a new good or service that is co-located within a current location that is not transparent with other operations, employees and revenue, which would not be included in the calculation of new state revenue;

(b) a business entity has a material amount of employees operating the company's retail business; or

(c) a company adjusts operations that create operations outside the scope of the agreement or boundaries of the economic development zone.

(9) The office may consider sales and use tax paid for capital asset purchases of a business entity within the scope of the agreement up to 50% of the total amount of state tax.

(10) A company who hires employees for the new commercial project through a professional employment organization shall require the professional employment organization to provide the office an employee report under attestation.

(11) The projected employment and salary growth from the latest annual report period may be carried forward to additional periods when the Fiscal Impact Questionnaire omits this information.

(12) A company who does not attain the 20 service hours per high paying job per year may be awarded a tax credit if other statutory or contracted terms are met to the satisfaction of the office.

R357-3-107. Modification of Agreement.

(1) GOEO[~~e Utah~~] may change, or a business entity may request to change, the terms of a tax credit offer or contract as set forth in this section[-].

([a]2) [Substantive Modifications: u] Under extraordinary circumstances, a business entity may request substantive modifications to [change] the terms of the tax credit agreement if:

([i]a) there is a substantial change to new commercial project plan; and

([ii]b) changing the terms of the tax credit would benefit the state.

([b]3) [Nonsubstantive Modifications: -]GOEO[~~e Utah~~] and the business entity may make nonsubstantive modifications to the tax credit contract to:

([i]a) correct clerical errors made in the initial application, the offer, the contract, or the tax credit;

([ii]b) make technical changes that do not alter the tax incentive amount or violate any state or federal law; or

([iii]c) adjust the timeline:

([A]i) less than 24 months; or

([B]ii) up to 48 months for unforeseen circumstances, as determined by the office.

([2]4) Substantive modifications require Board consultation before the Executive Director's approval or denial.

([3]5) [Requests and modifications shall be documented and maintained by -]GOEO[~~e Utah~~] shall document and maintain requests and modifications.

([4]5) When a business entity acquires another company with employees in Utah or if another Utah company acquires a business entity and the office can distinguish between both entities' employees and separate how much new state revenue is generated from the acquiree and acquirer, no changes to the baseline employees or new state revenues will be made.

([5]7) When a business entity acquires another company with employees in Utah or if another Utah company acquires a business entity and the office cannot separate the acquiree's and acquirer's employees or new state revenue the office shall:

(a) increase the baseline to the lesser of the acquiree's number of full-time positions as determined by the office:

(i) on the [Go Utah] Board approval date; or

(ii) at the time of acquisition; and

(b) increase baseline state revenue to the same time period as chosen for baseline jobs.

([6]8) A company may request to exclude the 2020 EDTIF period. If a request is granted the contract must be amended that:

(a) establishes a one-year gap where no incentive is awarded;

(b) delays annual job projections by one year moving forward[-]; and

(c) extends the contract by one year.

([7]9) The office may deny a request to exclude the 2020 EDTIF period for any reason.

R357-3-108. High Paying Jobs and Economic Distress.

([4]-) To establish that a county is experiencing economic distress a business entity or county shall submit to the office:

([a]1) evidence that the county's unemployment rate was at least 5% for the six consecutive months before the application date;

([b]2) evidence that the county experienced year over year economic decline; and

([c]3) other evidence as requested by the office.

KEY: economic development, jobs, tax credit

Date of Last Change: 2024~~February 3, 2023~~

Notice of Continuation: November 30, 2023

Authorizing, and Implemented or Interpreted Law: 63N-2-110

NOTICE OF PROPOSED RULE

TYPE OF FILING: Repeal

Rule or Section Number:	R452-100	Filing ID: 56237
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Agency Information

1. Department:	Cultural and Community Engagement
Agency:	Arts and Museums, Museum Services

NOTICES OF PROPOSED RULES

Street address:	3760 S Highland Drive	
City, state and zip:	Millcreek, UT 84106	
Contact persons:		
Name:	Phone:	Email:
Kristin Mead	218-393-2995	kristinmead@utah.gov
Sophia Riggs	801-874-7205	sophiariggs@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule or section catchline:
R452-100. Certified Local Museum Designation
3. Purpose of the new rule or reason for the change:
This filing is being submitted for the purpose of repealing this rule as the practice of certifying local museums is no longer part of statute and has been discontinued.
4. Summary of the new rule or change:
In October 2020, the Utah Division of Arts and Museums reviewed all rules associated with the agency with the Attorney General's Office. Regarding Rule R452-100, Certified Local Museum Designation, it was recommended that as this item was removed from statute that the Division of Arts and Museums, Museum Services (Division) allow the rule to expire.
It was removed from statute because it was deemed unnecessary to the museum field.
Normally certifications are overseen by member associations not by state agencies. Thus, the Division suggested removing the requirement from state statute, which was approved by the Utah Legislature in 2020. Since that time, the agency has discontinued the practice of museum certification, thus this rule is no longer necessary.
Therefore, this rule is repealed in its entirety.
(EDITOR'S NOTE: A corresponding five-year review extension for Rule R452-100 is under ID 54458 in this issue, December 15, 2023, of the Bulletin. This extends the expiration deadline to 04/18/2024 to allow the repeal to go through the proper process.)

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
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A) State budget:			
There is no anticipated cost to state budgets as the practice of Certifying Local Museums was discontinued in 2020.			
B) Local governments:			
There is no anticipated cost to local governments as the practice of Certifying Local Museums was discontinued in 2020 and did not involve local governments.			
C) Small businesses ("small business" means a business employing 1-49 persons):			
There is no anticipated cost to small businesses as the practice of Certifying Local Museums was discontinued in 2020 and did not involve small businesses.			
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):			
There is no anticipated cost to non-small businesses as the practice of Certifying Local Museums was discontinued in 2020 and did not involve non-small businesses.			
E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):			
There is no anticipated cost to other persons as the practice of Certifying Local Museums was discontinued in 2020 and did not involve persons other than small businesses, non-small businesses, state, or local government entities.			
F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):			
There are no compliance costs for affected persons as the practice of Certifying Local Museums was discontinued in 2020.			
G) Regulatory Impact Summary Table (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 will be included in narratives above.)			
Regulatory Impact Table			
Fiscal Cost	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0

Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$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
H) Department head comments on fiscal impact and approval of regulatory impact analysis:			
The Executive Director of Cultural and Community Engagement, Jill Love, has reviewed and approved this regulatory impact analysis.			

Citation Information

6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:		
Subsection 9-6-603(8)		

Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	01/17/2024
9. This rule change MAY become effective on:	01/24/2024
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.	

Agency Authorization Information

Agency head or designee and title:	Jill Love, Executive Director	Date:	11/29/2023
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R452. Cultural and Community Engagement, Arts and Museums, Museum Services.**~~R452-100. Certified Local Museum Designation.~~****~~R452-100 1. Authority and Purpose.~~**

- ~~_____ (1) This rule is enacted pursuant to Subsection 9-6-603(8).~~
~~_____ (2) This rule establishes a program by which local museums may be designated as certified local museums.~~

~~R452-100 2. Requirements Museums Must Meet to Be Considered Eligible for Application as a Certified Local Museum.~~

- ~~_____ (1) To apply for certified local museum designation, a museum shall:~~
~~_____ (a) be located in Utah;~~
~~_____ (b) be a nonprofit organization that has tax exempt status under Section 501(c)(3) of the Internal Revenue Code;~~
~~_____ (c) be organized on a permanent basis for educational or aesthetic purposes;~~
~~_____ (d) have as its primary purpose the display or use of collections and exhibits;~~
~~_____ (e) display objects to the public through facilities that it owns or operates; and~~
~~_____ (f) have at least one paid or unpaid staff member, or the equivalent, whose primary duty is the care, acquisition, or exhibition to the public of objects owned or used by the museum.~~
~~_____ (2) A museum operated by a government entity need not satisfy the requirements of Subsection (1)(b).~~

~~R452-100 3. Application for Certified Local Museum Designation.~~

- ~~_____ (1) A museum wishing to apply for the certified local museum designation shall:~~
~~_____ (a) complete the form entitled "Certification Requirements for Museums" which is available from the Office of Museum Services;~~
~~_____ (b) obtain a letter from the Department of the Treasury confirming that:~~
~~_____ (i) the museum is registered as a nonprofit organization as described in Subsection R210-100-2(1)(b); and~~
~~_____ (ii) the museum has been assigned an Employee Identification Number; and~~
~~_____ (c) submit both the form and the letter to the Office of Museum Services.~~
~~_____ (2) A museum operated by a political subdivision of the state:~~
~~_____ (a) need not comply with the requirements of Subsection (1)(b); and~~
~~_____ (b) shall submit a letter to the Office of Museum Services:~~
~~_____ (i) indicating that it is operated by a political subdivision of the state; and~~
~~_____ (ii) providing an Employee Identification Number.~~

~~R452-100 4. Granting a Certified Local Museum Designation.~~

~~_____ Upon receipt of the materials outlined in Section R210-100-3, the Office of Museum Services will provide a letter of certification to the applying museum.~~

~~KEY: certified local museums, museum services, museums~~
~~Date of Last Change: April 7, 2022~~
~~Notice of Continuation: December 20, 2018~~
~~Authorizing, and Implemented or Interpreted Law: 9-6-603(8)~~

NOTICE OF PROPOSED RULE**TYPE OF FILING:** Repeal

Rule or Section Number:	R495-861	Filing ID: 56214
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Agency Information

1. Department:	Health and Human Services	
Agency:	Administration (Human Services)	
Room number:	4th Floor	
Building:	MASOB	
Street address:	195 N 1950 W	
City, state and zip:	Salt Lake City, UT 84116	
Contact persons:		
Name:	Phone:	Email:
Curt Williams	385 272- 4220	chwilliams@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R495-861. Requirements for Local Discretionary Social Services Block Grant Funds
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
Following the consolidation of the Department of Health and Human Services (Department), the Department is working to amend and consolidate the administrative rules.
The Department is repealing this rule and will be reenacting it under Title R380. The repeal of this rule is technical in nature and does not reflect substantive changes to the existing process for allocating social services block grant funds.
4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):
This rule is repealed in its entirety and the provisions moved under Title R380.

Fiscal Information**5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:****A) State budget:**

This repeal of this rule will not result in a fiscal impact or benefit for the state budget. It is technical in nature and does not impact existing operations.

B) Local governments:

This repeal of this rule will not result in a fiscal impact or benefit for local governments. It is technical in nature and does not impact existing operations.

C) Small businesses ("small business" means a business employing 1-49 persons):

This repeal of this rule will not result in a fiscal impact or benefit for small businesses. It is technical in nature and does not impact existing operations.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):

This repeal of this rule will not result in a fiscal impact or benefit for the non-small businesses. It is technical in nature and does not impact existing operations.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

This repeal of this rule will not result in a fiscal impact or benefit for persons other than small businesses, non-small businesses, state, or local governments. It is technical in nature and does not impact existing operations.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):

There are no compliance costs associated with this proposed repeal.

G) Regulatory Impact Summary Table (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 will be included in narratives above.)**Regulatory Impact Table**

Fiscal Cost	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0

Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$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
H) Department head comments on fiscal impact and approval of regulatory impact analysis:			
The Executive Director of the Department of Health and Human Services, Tracy S. Gruber, has reviewed and approved this regulatory impact analysis.			

Citation Information

6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:
Section 26B-1-202

Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	01/17/2024

9. This rule change MAY become effective on:	01/24/2024
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.	

Agency Authorization Information

Agency head or designee and title:	Tracy S. Gruber, Executive Director	Date:	11/19/2023
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~~**[R495. Health and Human Services, Administration.**~~~~**R495 861. Requirements for Local Discretionary Social Services Block Grant Funds.**~~~~**R495 861 1. Authority and Purpose.**~~

~~_____ A. The Department of Human Services is authorized to create rules necessary for the provision of social services by Section 62A 1-111.~~

~~_____ B. The purpose of this rule is to specify the allocation of the Local Discretionary Social Services Block Grant Funds.~~

~~**R495 861 2. Requirements for Local Discretionary Social Services Block Grant Funds.**~~

~~_____ A. Social Services Block Grant funds allocated to local governments are distributed to either counties or associations of government. These funds must be used as allowed by the Social Services Block Grant. The following agencies receive local discretionary social services block grant funds: Bear River Association of Governments, Weber/Morgan Counties, Davis County, Salt Lake County, Tooele County, Mountainlands Association of Governments, Six County Association of Governments, Five County Association of Governments, Uintah Basin Association of Governments, Southeastern Utah Association of Governments, and San Juan County.~~

~~_____ B. Social Services Block Grant funds identified for local discretionary use by the Department of Human Services shall be allocated annually to local governments based on the following formula:~~

~~_____ 1. Each area with less than 15,000 population will receive a base of \$54,000.00.~~

~~_____ 2. Each area with less than 150,000 population will receive a base of \$34,000.00.~~

~~_____ 3. The remainder of the money will be allocated based on the percentage each area population is to the state population.~~

~~_____ C. Each local government shall provide non-federal local government funds of at least 25 percent of their award. The additional 25 percent must be used for Social Services Block Grant Purposes.~~

~~**KEY: social services, match requirements**~~

~~**Date of Last Change: July 16, 2015**~~

~~**Notice of Continuation: October 17, 2022**~~

~~**Authorizing, and Implemented or Interpreted Law: 62A 1-114]**~~

NOTICE OF PROPOSED RULE

TYPE OF FILING: New

Rule or Section Number:	R500-2	Filing ID:
		56207

Agency Information

1. Department:	Health and Human Services
Agency:	Ombudsman (Office of)
Room number:	1091

NOTICES OF PROPOSED RULES

Building:	Multi Agency State Office Building (MASOB)	
Street address:	195 N 1950 W	
City, state and zip:	Salt Lake City, UT 84116	
Contact persons:		
Name:	Phone:	Email:
Angie McCourt	385-505-3502	amccourt@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule or section catchline:
R500-2. Disabilities Ombudsman Program
3. Purpose of the new rule or reason for the change:
The purpose of this rule is to establish the program and conduct of the Disabilities Ombudsman within the Department of Health and Human Services (Department).
The Disabilities Ombudsman was created for the purpose of promoting, advocating, and ensuring the rights and privileges of an individual with a disability are upheld.
4. Summary of the new rule or change:
The purpose of this rule is to outline the Disabilities Ombudsman Program and provide procedures for processing complaints and conducting investigations.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
The implementation of this rule is not expected to have any fiscal impact on the state budget, revenues, or expenditures, as it implements the Disabilities Ombudsman Program in accordance with Section 26B-6-703.
Any costs that may be incurred by this program are inestimable at this time and would be appropriated through the legislative process.
B) Local governments:
There is no impact on local governments as they neither fund nor provide benefits to the Disabilities Ombudsman.
C) Small businesses ("small business" means a business employing 1-49 persons):

There is no impact on small businesses as this rule establishes processes and procedures for the Disabilities Ombudsman but does not affect small businesses.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):

There is no impact on non-small businesses as this rule establishes processes and procedures for the Disabilities Ombudsman but does not affect non-small businesses.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

There is no impact on persons other than small businesses, non-small businesses, state, or local government entities as this rule establishes processes and procedures for the Disabilities Ombudsman, but does not affect persons other than small businesses, non-small businesses, state, or local government entities.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):

The Department does not foresee any compliance costs associated with this proposed rule.

G) Regulatory Impact Summary Table (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 will be included in narratives above.)

Regulatory Impact Table			
Fiscal Cost	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$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
H) Department head comments on fiscal impact and approval of regulatory impact analysis:			
The Executive Director of the Department of Health and Human Services, Tracy Gruber, has reviewed and approved this regulatory impact analysis.			

Citation Information

6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:

Section 26B-6-703		
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Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	01/17/2024
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9. This rule change MAY become effective on: 01/24/2024

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

Agency Authorization Information

Agency head or designee and title:	Tracy S. Gruber, Executive Director	Date:	07/16/2023
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R500. Health and Human Services, Ombudsman (Office of).**R500-2. Disabilities Ombudsman Program.****R500-2-1. Purpose and Authority.**

(1) The purpose of this rule is to outline the Disabilities Ombudsman Program and provide procedures for processing complaints and conducting investigations.

(2) Section 26B-6-703 authorizes this rule.

R500-2-2. Definitions.

(1) "Complainant" means a person who initiates a complaint.

(2) "Complaint" means a complaint initiated with the ombudsman identifying a person who has violated the rights and privileges of an individual with a disability.

(3) "Division" means the Division of Customer Experience.

(4) "Investigative hearing" means a non-adversarial hearing held at the discretion of and presided over by the ombudsman to ascertain the facts necessary to resolve the complaint.

(5) "Ombudsman" means the ombudsman appointed in Section 26B-6-702.

(6) "Office" means the Department of Health and Human Services Office of the Ombudsman.

(7) "Rights and privileges of an individual with a disability" means the rights and privileges of an individual with a disability described in Subsections 26B-6-802(1) through (3).

R500-2-3. Program Administration.

(1) The Department of Health and Human Services shall establish an office of ombudsman, which includes the disabilities ombudsman program. The office shall be responsible for the administration of the disabilities ombudsman program.

(2) The ombudsman shall meet the following minimum qualifications:

(a) executive and administrative experience;

(b) experience in laws and policies regarding individuals with a disability;

(c) leadership and program management skills; and

(d) negotiation and problem resolution skills.

(3) The ombudsman shall ensure the rights and privileges of an individual with a disability are upheld.

(4) The ombudsman shall review, as needed, procedures of state entities that serve individuals with a disability.

(5) The ombudsman shall develop a website that includes training and information regarding:

(a) the role and duties of the ombudsman;

(b) the rights and privileges of an individual with a disability; and

(c) services available in the state to an individual with a disability.

R500-2-4. Filing and Processing Complaints.

(1) The complainant may file a written, oral, or electronic complaint with the office no later than three months from the date of the alleged circumstances giving rise to the complaint. The complainant may file at any of the following:

(a) Multi-Agency State Office Building

Utah Department of Health and Human Services

Office of Ombudsman - 1st Floor

195 North 1950 West

Salt Lake City, Utah 84116;

(b) dhhsustomerexp@utah.gov; or

(c) (801) 538-4580.

(2) The complaint shall include:

(a) a detailed description of the alleged circumstances which caused the complaint, including dates and locations;

(b) the names and contact information of any and all persons involved in those circumstances;

(c) a detailed description of any actions taken by the complainant to address the complaint; and

NOTICES OF PROPOSED RULES

(d) the desired result or outcome that the complainant is seeking from the office.

(3) If a complaint does not include the information in Subsection (2), the office will contact the complainant for more information.

R500-2-5. Conducting an Investigation.

(1) The office shall contact the complainant within three business days of receiving a properly filed complaint.

(2) The ombudsman's investigation of a complaint may include one or more of the following:

- (a) a referral to a governmental entity or other services;
- (b) the collection of facts, information, or documentation;
- (c) holding an investigatory hearing; or
- (d) an inspection of the premises of the person named in the complaint.

(4) The office will complete the investigation within 180 days from the date of filing the complaint, taking into consideration extenuating circumstances such as the complexity of the case.

(5) The office shall notify the complainant upon the completion of the investigation.

(6) The complainant may appeal the result of the investigation by submitting a request to the division director within 30 days of receiving the results of the investigation.

(7) The office investigative hearing is not an adjudicative proceeding. The Utah Rules of Civil Procedure and the Utah Rules of Evidence do not apply. No written decision will be issued and the ombudsman's determinations may not be appealed.

(8) The ombudsman may decline to investigate a complaint. If the ombudsman declines to investigate a complaint, the ombudsman shall notify the complainant and the division of the declination and reason.

R500-2-6. Confidentiality.

(1) The office shall only disclose files maintained by the ombudsman program and at the discretion of the ombudsman.

(2) The office may not disclose the identity of a complainant or party named in the complaint unless:

- (a) the complainant or the legal representative of the complainant consents in writing, orally, or through the use of auxiliary aids and services to the disclosure;
- (b) ordered by a court to disclose; or
- (c) approved by the ombudsman and is made, as part of an investigation involving the complainant, to an agency that:

(i) has statutory responsibility for the complainant, over the action alleged in the complaint, or another party named in the complaint;

(ii) is able to assist the ombudsman to achieve resolution of the complaint; or

(iii) is able to provide expertise that would benefit the complainant.

R500-2-7. Complaints Regarding Ombudsman Program.

(1) Complaints made about the office, the office shall notify the director of the division immediately.

(2) The director or designee shall investigate the complaint within ten business days of receipt of the complaint.

(3) The director or designee shall document the nature of the complaint and investigation.

(4) The director or designee shall provide a response to the complainant within ten business days following completion of the investigation.

(5) The director or designee shall document the response.

KEY: government documents, freedom of information, public records

Date of Last Change: 2024

Authorizing, and Implemented or Interpreted Law: 26B-6-703

NOTICE OF PROPOSED RULE

TYPE OF FILING: Amendment

Rule or Section Number:	R590-171	Filing ID: 56218
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Agency Information

1. Department:	Insurance
Agency:	Administration
Room number:	Suite 2300
Building:	Taylorville State Office Building
Street address:	4315 S 2700 W
City, state and zip:	Taylorville, UT 84129
Mailing address:	PO Box 146901
City, state and zip:	Salt Lake City, UT 84114-6901
Contact persons:	
Name:	Phone: Email:
Steve Gooch	801-957-9322 sgooch@utah.gov

Please address questions regarding information on this notice to the persons listed above.

General Information

2. Rule or section catchline:

R590-171. Surplus Lines Procedures Rule

3. Purpose of the new rule or reason for the change:

This rule is being changed in compliance with Executive Order No. 2021-12.

During the review of this rule, the Department of Insurance (Department) discovered a number of minor issues that needed to be amended.

4. Summary of the new rule or change:

The majority of the changes are being done to fix style issues to bring this rule text more in line with the Rulewriting Manual for Utah standards.

Other changes make the language of this rule more clear, remove the Penalties section (old R590-171-10), and update the Severability section (new R590-171-10) to use the Department's current language.

The changes do not add, remove, or change any regulations or requirements.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:

A) State budget:

There is no anticipated cost or savings to the state budget.

The changes are largely clerical in nature and will not change how the Department functions.

B) Local governments:

There is no anticipated cost or savings to local governments.

The changes are largely clerical in nature and will not affect local governments.

C) Small businesses ("small business" means a business employing 1-49 persons):

There is no anticipated cost or savings to small businesses.

The changes are largely clerical in nature and will not affect small businesses.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):

There is no anticipated cost or savings to non-small businesses.

The changes are largely clerical in nature and will not affect non-small businesses.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

There is no anticipated cost or savings to any other persons.

The changes are largely clerical in nature.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):

There are no compliance costs for any affected persons.

The changes are largely clerical in nature.

G) Regulatory Impact Summary Table (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 will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$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

H) Department head comments on fiscal impact and approval of regulatory impact analysis:

The Commissioner of the Department of Insurance, Jonathan T. Pike, has reviewed and approved this regulatory impact analysis.

Citation Information

6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:

Section 31A-2-201	Section 31A-15-103	Section 31A-15-111
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Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	01/17/2024
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9. This rule change MAY become effective on:	01/24/2024
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.	

Agency Authorization Information

Agency head or designee and title:	Steve Gooch, Public Information Officer	Date:	11/28/2023
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R590. Insurance, Administration.**R590-171. Surplus Lines Procedures Rule.****R590-171-1. Authority.**

This rule is promulgated ~~by the commissioner pursuant to the general rule making authority vested in the commissioner by Section 31A-2-201 and pursuant to the specific authority of Sections 31A-15-103(3), 31A-15-103(11) and 31A-15-111]~~ Sections 31A-2-201, 31A-15-103, and 31A-15-111.

R590-171-2. Purpose and Scope.

~~[A-](1)~~ The purpose of this rule is to:

~~[(1) to-](a)~~ recognize ~~[The-]the~~ Surplus Line Association of Utah as the advisory organization of surplus lines producers;

~~[(2) to-](b)~~ authorize ~~[The-]the~~ Surplus Line Association of Utah to conduct the examination of surplus lines transactions;

~~[(3) to-](c)~~ authorize ~~[The-]the~~ Surplus Line Association of Utah to collect a stamping fee;

~~[(4) to-](d)~~ require that ~~[each person licensed as-]a~~ surplus lines producer ~~[in Utah-]be~~ a member of the advisory organization;

~~[(5) to-](e)~~ regulate access and exceptions to the surplus lines market ~~[, with exceptions made for substantial insureds who are presumed to be sophisticated insurance buyers who the commissioner finds can adequately protect their own interests because of their financial resources, business experience and insurance knowledge]; and~~

~~[(6) to-](f)~~ prescribe procedures for the placement of insurance with a surplus lines [insurers]insurer.

~~[B- This rule applies, pursuant to Section 31A-15-103, to the placement of insurance with surplus lines insurers on risks located in Utah-](2) This rule applies to a person placing insurance with a surplus lines insurer on a risk located in Utah.~~

R590-171-3. Definitions.

~~[— For the purpose of this rule the commissioner adopts the definitions as set forth in Section 31A-1-301 and in addition the following:~~

~~— A- "Export list" means a list published by the commissioner of coverages and classes of insurance for which the commissioner has determined no general market exists with admitted insurers-]~~

Terms used in this rule are defined in Section 31A-1-301. Additional terms are defined as follows:

~~[B-](1)(a)~~ "Exempt ~~[Commercial Purchaser]commercial purchaser"~~ means ~~[any-]a~~ person purchasing commercial insurance from the surplus lines market that ~~[, at the time of placement,]~~ meets the following requirements:

~~[(i) The-](i)~~ the person employs or retains a qualified risk manager to negotiate insurance coverage;

~~[(ii) The-](ii)~~ the person ~~[has-]paid~~ aggregate nationwide commercial property and casualty insurance premiums ~~[in excess-]of more than \$100,000~~ in the immediately preceding 12 months; and

~~[(iii) The-](iii)~~ the person meets ~~[at least-]one or more~~ of the following criteria:

~~[(A) The-](A)~~ the person possesses a net worth ~~[in excess-]of more than \$20,000,000~~ as ~~[such amount is-]adjusted [pursuant to-]under Subsection (1)(b);~~

~~[(B) The-](B)~~ the person generates annual revenues ~~[in excess-]of more than \$50,000,000~~ as ~~[such amount is-]adjusted [pursuant to-]under Subsection (1)(b);~~

~~[(C) The-](C)~~ the person employs more than 500 full-time or full-time equivalent employees per individual insured or is a member of an affiliated group employing more than 1,000 employees in the aggregate;

~~[(D) The-](D)~~ the person is a not-for-profit organization or public entity generating annual budgeted expenditures of at least \$30,000,000 as ~~[such amount is-]adjusted [pursuant to-]under Subsection (1)(b); or~~

~~[(E) The-](E)~~ the person is a municipality with a population ~~[in excess-]of more than 50,000 persons.~~

~~[(b) Effective on January 1, 2015, and each fifth January occurring thereafter, the amounts in R590-171-3-B-(a)(iii)(A), (B), and (D) shall be adjusted to reflect the percentage change for such five-year period in the Consumer Price index for all Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor, 15 U.S.C. 8206(5)](b) The amounts in Subsections (1)(a)(iii)(A), (1)(a)(iii)(B), and (1)(a)(iii)(D) are adjusted each fifth January beginning January 1, 2015, to reflect the percentage change for such five-year period in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.~~

~~[— C- "Producer" means an insurance agent, broker or surplus lines broker as defined in Section 31A-1-301-91-]~~

~~[(2) "Export list" means a list, published and determined by the commissioner, of coverages and classes of insurance for which no general market exists with an admitted insurer.~~

~~[— D- "Surplus lines producer" means a licensee as defined in Section 31A-23a-106(2)(b) to place insurance with surplus lines insurers in accordance with Section 31A-15-103 and this rule-]~~

~~[E-](3)~~ "Surplus lines insurer" means a non-admitted insurer that may place business ~~[, pursuant to Title 31A, Chapter 15, Part 1 and this rule,]~~ in Utah with a surplus lines producer.

~~[(4) "Surplus lines producer" means a licensee holding a license type described in Subsection 31A-23a-106(2)(b).]~~

~~[F-](5)~~ "Surplus lines transaction" means:

~~(a) the solicitation, negotiation, procurement, or effectuation with a surplus lines insurer of an insurance contract or certificate of insurance[- It also means any-]; or~~

~~(b) a renewal, cancellation, endorsement, audit, or other adjustment to [the-]an insurance contract.~~

R590-171-4. Surplus Line Association of Utah.

~~[A-](1)~~ The Surplus Line Association of Utah is recognized as the advisory organization of surplus lines producers ~~[authorized by-]under Section 31A-15-111.~~

~~[B- Each person licensed as a-](2)~~ A licensed surplus lines producer ~~[in Utah must-]shall~~ be a member of the Surplus Line Association of Utah.

~~[(C)]~~(3) The Surplus Line Association of Utah is authorized to:

~~[(1) to]~~(a) facilitate and encourage compliance by its members with:

~~_____~~(i) the laws of Utah; and
~~_____~~(ii) the rules of the commissioner ~~[relative-]~~related to surplus lines insurance~~[and to-]~~;

~~_____~~(b) act in other matters ~~[as-]~~specified by Section 31A-15-111;

~~[(2) to]~~(c) conduct the examination of a surplus lines ~~[transactions required-]~~transaction under Subsection 31A-15-103(11);

~~[(3) to make a determination that]~~(d) determine if a surplus lines transaction ~~[is in compliance-]~~complies with Subsection 31A-15-103(11) and with Sections R590-171-6 and R590-171-7~~[-of this rule]~~; and

~~[(4) to]~~(e) collect the stamping fee ~~[prescribed by-]~~under Subsection 31A-15-103(11)(d).

R590-171-5. Export List.

~~[A-]~~(1) The commissioner shall maintain an export list of insurance coverages and classes that may be placed with a surplus lines ~~[insurers]~~insurer.

~~[(2)]~~(a) The commissioner ~~[may consider-]~~considers the following in determining the insurance coverages and classes to be ~~[listed]~~included on the export list:

~~[(a)]~~(i) the current marketplace;

~~[(b)]~~(ii) information from the Surplus Line Association ~~[Board of Directors]~~of Utah's board of directors;

~~[(c)]~~(iii) information from admitted and surplus lines insurers doing business in Utah;

~~[(d)]~~(iv) information from other sources, including producers and consumers; and

~~[(e) any]~~(v) other relevant information~~[-the commissioner deems relevant]~~.

~~[(3) Any-]~~(b)(i) A person may request, in writing, that~~[-at the next publication of the list,]~~ the commissioner add or remove a coverage or a class of insurance from the export list.

~~_____~~(ii) The person ~~[must-]~~shall provide evidence of market conditions to substantiate the request.

~~[B-]~~(2) The export list shall be published at least annually but may be revised and republished at any time.

R590-171-6. Conditions for Placing Insurance with a Surplus Lines ~~[Insurers]~~Insurer.

Placement of insurance with a surplus lines ~~[insurers]~~insurer pursuant to Section 31A-15-103 ~~may only be done in accordance with either Section A, B or C below]~~insurer is subject to Subsections (1) through (3). All information relating to the placement of insurance pursuant to Section 31A-15-103 shall be made available to the commissioner upon request.

~~[A-]~~(1) Insurance coverages and classes included on the export list may be placed with a surplus lines ~~[insurers]~~insurer.

~~[B-]~~(2)(a) Insurance coverages and classes not included on the export list may be placed with a surplus lines ~~[insurers only under the following conditions]~~insurer only if:

~~[(1) A-]~~(i) a good faith effort ~~[must be-]~~is made to place the insurance with an admitted ~~[insurers-]~~insurer that the producer ~~[has reason to believe will consider writing-]~~believes will write the type of coverage or class of insurance involved~~[-If that effort shows that]~~consistent with the following:

~~_____~~(A) the insurance cannot be obtained ~~[because of-]~~due to underwriting reasons, or the insured requires specific terms and conditions of coverage ~~[which-]~~that are unavailable through an admitted ~~[insurers]~~insurer~~[-the insurance may be placed with surplus lines insurers. Placement]~~

~~_____~~(B) placement with ~~[the-]~~a surplus lines insurer solely to obtain a better price does not constitute good faith unless the producer demonstrates that the price quoted by the admitted market is excessive ~~[as defined in-]~~under Subsection 31A-19a-201(2)~~[-]~~; and

~~[(2) The-]~~(C) the inability to place ~~[the-]~~insurance through an admitted insurer with whom the producer has an established relationship is not an exception to the obligation to place the insurance with an admitted insurer~~[-]~~; and

~~[(3) The-]~~(ii) the producer ~~[must-]~~documents ~~[his-]~~the good faith efforts made to place the insurance with an admitted ~~[insurers]~~insurer.

~~_____~~(b)(i) The good faith effort documentation ~~[must-]~~in Subsection (2)(a)(ii) shall include ~~[the-]~~a record of the efforts made to place the insurance ~~[and-]~~together with a written explanation confirming that the effort ~~[as being-]~~is made in good faith.

~~_____~~(ii) The good faith effort documentation shall be maintained in the surplus lines producer's and the originating producer's files for at least three years from the inception date of coverage or renewal.

~~[(C)]~~(3) An exempt commercial purchaser~~[-that, at the time of placement, meets the requirements as defined in R590-171-3(B),]~~ may purchase commercial insurance from the surplus market.

~~[-----D. All information relating to the placement of insurance pursuant to Section 31A-15-103 shall be made available to the commissioner upon his request.]~~

R590-171-7. Conditions for Marketing Insurance with a Surplus Lines ~~[Insurers]~~Insurer.

~~[A- Producers-]~~A producer may not solicit business on behalf of a surplus lines insurer~~[-However-]~~except as allowed in this section.

~~[(1) Producers-]~~(1) A producer may advertise the availability of an insurance ~~[products-]~~product for the insurance coverages and classes included on the export list to potential insureds and other producers.

~~[(2) Surplus-]~~(2)(a) A surplus lines ~~[producers-]~~producer may advertise ~~[their-]~~its services and product lines to other producers.

~~[(3) Such advertisements-]~~(b) A surplus lines producer advertisement:

~~_____~~(i) shall identify ~~[the fact-]~~that the insurance will be placed with a surplus lines insurer~~[-The advertisements must-]~~;

~~_____~~(ii) may not identify the insurer by name~~[-nor-]~~;

~~_____~~(iii) may not act as a solicitation on behalf of any surplus lines insurer~~[-The advertisements shall-]~~; and

~~_____~~(iv) may not identify specific rates or specific policy provisions.

~~[B-]~~(3) Once negotiations over the available terms and conditions for specific coverages and classes begin, ~~[at least-]~~the producer shall disclose, in writing, ~~[following facts must be disclosed in writing-]~~to the potential insured:

~~[(4)]~~(a) that the insurance will be placed through a surplus lines insurer~~[-and-]~~;

~~_____~~(b) the name of the insurer;

~~[(2)]~~(c) that the producer is not a producer of the potential insurer because surplus lines insurers are not permitted to appoint producers;

NOTICES OF PROPOSED RULES

~~[(3)](d)~~ that the surplus lines market is a specialty market ~~[that has]~~ with limited regulatory oversight by the commissioner, and specifically, there is no regulation of policy coverage forms or rates; and

~~[(4)](c)~~ that no protection is ~~[afforded]~~ given under any Utah guaranty fund ~~[mechanism]~~ association.

~~[(C)](4)~~ Subject to ~~[the general provisions of]~~ Section 31A-23a-501, a surplus lines producer may:

- ~~_____~~ (a) originate surplus lines insurance ~~[-or-]~~;
- ~~_____~~ (b) accept ~~[applications]~~ an application for surplus lines insurance from ~~[any other]~~ a producer ~~[duly]~~ licensed as to the kinds of insurance involved ~~[-The surplus lines producer may-]~~; and
- ~~_____~~ (c) compensate the originating producer involved in the transaction.

~~[(D)](5)(a)~~ Only ~~[that-]~~ the portion of a risk that is unacceptable to the admitted market may be placed with a surplus lines insurer.

~~_____~~ (b) If it is not possible to obtain the full amount of insurance required by segmenting the risk, or if the only portion that the admitted market will write is incidental to the principal elements of coverage, it is permissible to place the full amount with a surplus lines insurer.

~~_____~~ (c) If a full amount is placed with a surplus lines insurer under Subsection (5)(b), an ~~[An]~~ explanation ~~[must]~~ shall be provided in the submission documentation outlined in Section R590-171-8.

R590-171-8. Reporting and Examination.

~~[(A-)](1)~~ No later than 60 days after the effective date of a policy or a certificate of insurance ~~[that has been-]~~ placed with a surplus lines insurer, the surplus lines producer ~~[must]~~ shall file with the Surplus Line Association of Utah a complete copy of the policy or certificate ~~[and]~~ of insurance together with justification for placement with a surplus lines insurer ~~[-with the Surplus Line Association for examination pursuant to Subsection 31A-15-103(11)(a)].~~

~~[(B-)](2)~~ Justification for placement with a surplus lines insurer shall include:

~~[(1)](a)~~ for insurance ~~[exposures-]~~ placed pursuant to ~~[R590-171-6.A, consist of]~~ Subsection R590-171-6(1), identification of the specific coverage or class on the export list; ~~[-or]~~

~~[(2)](b)~~ for insurance ~~[exposures-]~~ placed pursuant to ~~[R590-171-6.B, consist of a copy of the-]~~ Subsection R590-171-6(2), a record of the effort to place the insurance with an admitted ~~[insurers required by R590-171-6.B(3); or]~~ insurer under Subsection R590-171-6(2)(a)(ii);

~~[(3)](c)~~ for insurance placed pursuant to ~~[R590-171-6.C, consist of a copy of-]~~ Subsection R590-171-6(3), an affidavit signed by the insured; ~~[-and]~~

~~[(4)](d)~~ if applicable, ~~[consist of the-]~~ an explanation required by ~~[R590-171-7.D]~~ Subsection R590-171-7(5)(c); and

~~[(5) consist of]~~ (c) any other information or documentation pertinent to the surplus lines placement.

~~[(C-)](3)~~ The Surplus Line Association of Utah shall provide submission forms ~~[to be used for complying with R590-171-8.B]~~ for compliance with Subsection (2).

~~[(D- If the contract-)](4)~~ If a policy or certificate of insurance is not available within 60 days, a binder with sufficient detail to determine the subject of the insurance, coverages, insured, insurer, premium amount and the justification required by ~~[R590-171-8.B must-]~~ Subsection (2) shall be filed with the Surplus ~~[Lines-]~~ Line Association of Utah.

~~[(E- If the-)](5)(a)~~ If, during an examination performed by the Surplus Line Association of Utah, it determines that ~~[the placement of]~~ a person placing a policy or certificate of insurance with a surplus lines insurer is ~~[not in compliance-]~~ noncompliant with ~~[Section-]~~ Subsection 31A-15-103(11)(a) or this rule, the Surplus Line Association of Utah shall take ~~[such-]~~ corrective action against the person ~~[-as the Association Board of Directors considers appropriate, subject to the review of the commissioner. The Association shall advise the commissioner of all cases of noncompliance.]~~

~~_____~~ (b)(i) The board of directors of the Surplus Line Association of Utah shall determine what corrective action is appropriate.

~~_____~~ (ii) The corrective action is subject to the review of the commissioner.

~~_____~~ (c) The Surplus Line Association of Utah shall inform the commissioner of all corrective action cases of noncompliance.

R590-171-9. Rule Distribution.

The Surplus Line Association of Utah shall distribute a copy of ~~[this rule-]~~ Rule R590-171 to every surplus lines producer and shall instruct ~~[all-]~~ the surplus lines producers ~~[as to its scope and operation]~~ of the scope, purpose, and operation of the rule.

~~[(R590-171-10. Penalties-]~~

~~_____~~ A person found to be in violation of this rule shall be subject to penalties as provided under 31A-2-308.

~~]~~

R590-171-~~[(4)]~~10. Severability.

~~[If a 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.]~~ If any provision of this rule, Rule R590-171, or its application to any person or situation is held invalid, such invalidity does not affect any other provision or application of this rule that can be given effect without the invalid provision or application. The remainder of this rule shall be given effect without the invalid provision or application.

KEY: insurance

Date of Last Change: 2024~~[January 22, 2013]~~

Notice of Continuation: May 23, 2019

Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-15-103; 31A-15-111

NOTICE OF PROPOSED RULE

TYPE OF FILING: Amendment

Rule or Section Number:	R590-281	Filing ID: 56219
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Agency Information

1. Department:	Insurance
Agency:	Administration
Room number:	Suite 2300
Building:	Taylorsville State Office Building
Street address:	4315 S 2700 W
City, state and zip:	Taylorsville, UT 84129

Mailing address:	PO Box 146901	
City, state and zip:	Salt Lake City, UT 84114-6901	
Contact persons:		
Name:	Phone:	Email:
Steve Gooch	801-957-9322	sgooch@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule or section catchline:
R590-281. License Applications Submitted by Individuals Who Have a Criminal Conviction
3. Purpose of the new rule or reason for the change:
This rule is being changed in compliance with Executive Order No. 2021-12. During the review of this rule, the Department of Insurance (Department) discovered a number of minor issues that needed to be amended.
4. Summary of the new rule or change:
The majority of the changes are being done to fix style issues to bring this rule text more in line with the Rulewriting Manual for Utah standards. Other changes make the language of this rule clearer and make explicit that this rule also applies to proceedings that are pending. The changes do not add, remove, or change any regulations or requirements.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
There is no anticipated cost or savings to the state budget. The changes are largely clerical in nature and will not change how the Department functions.
B) Local governments:
There is no anticipated cost or savings to local governments. The changes are largely clerical in nature and will not affect local governments.
C) Small businesses ("small business" means a business employing 1-49 persons):

There is no anticipated cost or savings to small businesses.

The changes are largely clerical in nature and will not affect small businesses.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):

There is no anticipated cost or savings to non-small businesses.

The changes are largely clerical in nature and will not affect non-small businesses.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

There is no anticipated cost or savings to any other persons.

The changes are largely clerical in nature.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):

There are no compliance costs for any affected persons.

The changes are largely clerical in nature.

G) Regulatory Impact Summary Table (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 will be included in narratives above.)

Regulatory Impact Table			
Fiscal Cost	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0

NOTICES OF PROPOSED RULES

Local Governments	\$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
H) Department head comments on fiscal impact and approval of regulatory impact analysis:			
The Commissioner of the Department of Insurance, Jonathan T. Pike, has reviewed and approved this regulatory impact analysis.			

Citation Information

6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:		
Section 31A-2-201		

Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	01/17/2024

9. This rule change MAY become effective on:	01/24/2024
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.	

Agency Authorization Information

Agency head or designee and title:	Steve Gooch, Public Information Officer	Date:	11/28/2023
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R590. Insurance, Administration.

R590-281. License ~~[Applications]~~ Application Submitted by Individuals—[an Individual Who Have—]Has a Criminal Conviction or Pending Proceeding.

R590-281-1. Authority.

This rule is promulgated by the commissioner pursuant to ~~[Subsection 31A-2-201(3) which authorizes the commissioner to adopt rules to implement the provisions of Title 31A]~~ Section 31A-2-201.

R590-281-2. Purpose and Scope.

(1) ~~[This rule sets]~~ The purpose of this rule is to set eligibility requirements for a license [applicants who have] applicant who has a criminal conviction or a pending proceeding.

(2) This rule applies to a license ~~[applicants who have]~~ applicant who has a criminal conviction or a pending proceeding.

R590-281-3. Definitions.

~~[The following definitions shall apply for the purpose of this rule:]~~ Terms used in this rule are defined in Section 31A-1-301. Additional terms are defined as follows:

(1) "Criminal conviction" means a felony, or a misdemeanor involving fraud, misrepresentation, theft, or dishonesty, that results in:

- (a) judgment of guilt entered by a court;
- (b) an admission;
- (c) a guilty plea;
- (d) a no contest plea;
- (e) a proceeding involving a plea in abeyance; or
- (f) another deferred adjudication agreement that has not yet been dismissed.

(2) "License" means an initial ~~[resident individual or resident agency insurance]~~ license issued by the commissioner; ~~and~~.

(3) "License applicant" means an individual applying for a license under:

- (a) Title 31A, Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and Reinsurance Intermediaries;
- (b) Title 31A, Chapter 23b, Navigator License Act;
- (c) Title 31A, Chapter 25, Third Party Administrators; or
- (d) Title 31A, Chapter 26, Insurance Adjusters.

~~[(2)](4)~~ "Proceeding" means:

(a) a criminal proceeding in which an individual is charged with a felony, or a misdemeanor involving fraud, misrepresentation, theft, or dishonesty, ~~[including a proceeding involving a plea in abeyance];~~ or

(b) ~~[a]~~ an administrative, civil, or regulatory enforcement proceeding in which an individual is alleged to have engaged in conduct involving fraud, misrepresentation, theft, or dishonesty.

R590-281-4. Eligibility to Apply for a License.

(1) Except as provided in Subsections ~~[(2)](3)~~ through [(4)](5), ~~[and except in the case of a juvenile adjudication,]~~ an individual who has [been convicted of or pleaded no contest to a felony, or a misdemeanor involving fraud, misrepresentation, theft, or dishonesty] a criminal conviction is eligible to apply for a license if:

- (a) the individual has completed probation, parole, or has been released from incarceration;
- (b) the individual has no criminal proceeding pending;
- (c) the individual has paid in full all fines and interest ordered by the court related to the criminal conviction;
- (d) the individual has paid in full all restitution ordered by the court related to the criminal conviction; and
- (e) the following time periods have elapsed from the date the individual was convicted~~[or]~~, released from incarceration, parole, or probation, or the expiration of the probationary term, whichever occurred last:

- (i) seven years in the case of a felony;
- (ii) five years in the case of a class A misdemeanor;
- (iii) four years in the case of a class B misdemeanor; or
- (iv) three years in the case of any other misdemeanor.

(2) Any pending administrative, civil, or regulatory proceeding must be resolved before an individual is eligible to apply for a license.

(3) Subsection (1) does not apply to:

(a) a juvenile adjudication; or

(b) an individual whose criminal charge was dismissed pursuant to a plea in abeyance agreement under Title 77, Chapter 2a, Pleas in Abeyance.

~~[(3) In applying this rule, the]~~ (4) The department will give effect to a conviction for a lower degree of offense pursuant to Section 76-3-402.

~~[(4)]~~ (5)(a)(i) An individual ~~[who has been]~~ convicted of violating the federal Violent Crime Control and Law Enforcement Act of 1994, 18 U.S.C. Sec. 1033, or who ~~[is deemed]~~ under 18 U.S.C. Sec. 1033 ~~[to have]~~ has been convicted of a felony involving dishonesty or breach of trust, may not apply for a license without first obtaining written consent from the commissioner to engage or participate in the business of insurance.

(ii) The policy and application for written consent are available on the department's website ~~[at www.insurance.utah.gov]~~, <https://insurance.utah.gov>.

(b) An individual who obtains written consent may apply for a license ~~[. The individual remains]~~, subject to all other license application requirements.

(c) An application for written consent is required even if:

(i) a felony ~~[charge]~~ conviction involving dishonesty or breach of trust has been dismissed pursuant to a plea in abeyance agreement under Title 77, Chapter 2a, Pleas in Abeyance; ~~[or]~~

(ii) a felony conviction involving dishonesty or breach of trust has been reduced to a lower degree of offense ~~[pursuant to]~~ under Section 76-3-402; or

(iii) a felony conviction involving dishonesty or breach of trust has been expunged under Title 77, Chapter 40a, Expungement.

~~[(5)]~~ (6) The department ~~[will]~~ shall deny a license application submitted by an individual who is not eligible under this ~~[S]~~ section.

~~[(6)]~~ (7) Eligibility to apply for a license under this Rule R590-281 is a separate determination from and does not affect eligibility to engage in the business of insurance under 18 U.S.C. Sec. 1033.

R590-281-5. Severability.

If any provision of this rule, R590-281, or its application to any person or situation is held invalid, such invalidity does not affect any other provision or application of this rule which can be given effect without the invalid provision or application. The remainder of this rule shall be given effect without the invalid provision or application.

KEY: insurance, licensing

Date of Last Change: 2024~~[December 23, 2020]~~

Authorizing, and Implemented or Interpreted Law: 31A-2-201(3)

NOTICE OF PROPOSED RULE

TYPE OF FILING: Amendment

Rule or Section Number:	R909-19	Filing ID: 56224
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Agency Information

1. Department:	Transportation	
Agency:	Motor Carriers	
Room number:	Administrative Suite, 1st Floor	
Building:	Calvin Rampton Building	
Street address:	4501 S 2700 W	
City, state and zip:	Taylorsville, UT 84129	
Mailing address:	PO Box 148455	
City, state and zip:	Salt Lake City, Utah 84114-8455	
Contact persons:		
Name:	Phone:	Email:
Leif Elder	801-580-8296	lelder@utah.gov
Becky Lewis	801-965-4026	blewis@utah.gov
James Godin	801-573-7181	jamesjgodin@agutah.gov
Lori Edwards	385-341-3414	loriedwards@agutah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule or section catchline:
R909-19. Safety Regulations for Tow Truck Operations - Tow Truck Requirements for Equipment, Operation, and Certification
3. Purpose of the new rule or reason for the change:
The Division of Motor Carrier (Division) is proposing revisions to Rule R909-19 due to continuing complaints regarding towing and fee charges. These revisions are being requested after consultation with the Department of Transportation's (Department) Motor Carrier Division, industry representatives, and the Motor Carrier Advisory Board.
4. Summary of the new rule or change:
These proposed rule changes make clarifications to facilitate the administration of and compliance with this rule. Clarifications include: 1) changing the definition of a "drop fee" and the description of the circumstances for which a tower can charge a drop fee;

- 2) stating that vehicle storage for towed vehicles must be in the county where the tow occurred;
- 3) affirming that storage fees may only be charged if a vehicle is placed in a facility that meets the requirements of Utah State Tax Commission rules; and
- 4) requiring consent of the tow charges to be reflected on a separate receipt.

This proposal also requires the Department to annually index storage fees to the Consumer Price Index. The tow truck service fee and administrative fee are already annually indexed. This change has been recommended by the Motor Carrier Advisory Board.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:

A) State budget:

There is no anticipated impact on the state budget.

The Department is charged with regulating motor carrier tow trucks, and this proposed change is part of those duties. This proposed rule change clarifies the current rule and will have no impact on how the Department functions.

B) Local governments:

This rule change is not expected to have a fiscal impact on local governments' revenues or expenditures.

This rule change does not apply to local governments.

C) Small businesses ("small business" means a business employing 1-49 persons):

These proposed rule changes may positively or negatively impact small businesses that are tow truck motor carriers because they include, in part, clarification and a definition for the drop fee operators may charge vehicle owners.

The Division is unable to accurately estimate the full impact the proposed changes will have on operators because it cannot predict how often operators will charge a drop fee.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):

These proposed rule changes may positively or negatively impact non-small businesses that are tow truck motor carriers because they include, in part, clarification and a definition for the drop fee operators may charge vehicle owners.

The Division is unable to accurately estimate the full impact the proposed changes will have on operators because it cannot predict how often operators will charge a drop fee.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

This proposed rule change may have a positive or negative impact on persons other than small businesses, non-small businesses, and state, or local government entities who own vehicles that will be subjected to the drop fee changes.

However, the Division is unable to accurately estimate the full impact the proposed changes will have on vehicle owners because it cannot predict how many of these fees tow truck operators will charge.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):

There will be no compliance costs associated with these proposed changes.

A fiscal impact will only occur if an operator imposes a drop fee.

G) Regulatory Impact Summary Table (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 will be included in the narratives above.)

Regulatory Impact Table

Fiscal Cost	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$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
H) Department head comments on fiscal impact and approval of regulatory impact analysis:			
The Executive Director of the Department of Transportation, Carlos M. Braceras, PE, has reviewed and approved this regulatory impact analysis.			

Citation Information

6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:		
Section 72-9-601	Section 72-9-602	Section 72-9-603
Section 72-9-604	Section 53-1-106	Section 41-6a-1405

Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	01/17/2024

9. This rule change MAY become effective on:	01/24/2024
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.	

Agency Authorization Information

Agency head or designee and title:	Carlos M. Braceras, PE, Executive Director	Date:	11/20/2023
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R909. Transportation, Motor Carrier.**R909-19. Safety Regulations for Tow Truck Operations - Tow Truck Requirements for Equipment, Operation, and Certification.****R909-19-1. Authority.**

Sections 72-9-601, 72-9-602, 72-9-603, 72-9-604, 53-1-106, and 41-6a-1405 authorize the Department to make this rule.

R909-19-2. Applicability.

Tow truck motor carriers and employees must comply with and observe administrative rules, including Rule R909-1, federal regulations, state and local traffic laws and guidelines as prescribed by [L]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 done at the vehicle, vessel, or outboard motor owner's or its legal operator's knowledge 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) "Drop Fee" means a fee a vehicle owner, authorized operator, or authorized agent of a vehicle owner pays to a tow truck motor carrier to relinquish a vehicle

(a) of which a tow truck motor carrier has taken possession to perform a non-consent tow; and

(b) the vehicle owner, authorized operator, or authorized agent of a vehicle owner is attempting to retrieve after the tow truck motor carrier is in possession of the vehicle but before the vehicle is removed from the property or scene.

(6)[(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.

(7)[(6)] "Gross vehicle weight rating (GVWR)" means the value specified by the manufacturer as the loaded weight of a single motor vehicle.

(8)[(7)] "Life-essential personal property" includes those items essential to sustain life or health, including prescription medication, medical equipment, essential clothing, such as shoes, coat, food and water, child safety seats, and government-issued photo identification.

(9)[(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 highway authority, as defined in Section 72-1-102.

(10)[(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.

(11)[(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]through Friday, except for designated state and federal holidays.

(12)[(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.

(13)[(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 under Subsection 41-1a-1101(5).

(14)[(13)] "Tow truck" means a commercial vehicle constructed, designed, altered, or equipped primarily to tow or remove damaged, disabled, abandoned, seized, repossessed, or impounded vehicles from a highway or other place using a crane, hoist, tow bar, tow line, dolly tilt bed, or other similar means of vehicle transfer without its own power or control.

NOTICES OF PROPOSED RULES

(15)[(44)] "Tow truck certification program" means a program to authorize and approve tow truck motor carriers, 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.

(16)[(45)] "Tow truck motor carrier" means a motor carrier as defined in Section 72-9-102, ~~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, assigning, or dispatching of drivers and employees concerned with the installation, inspection, and maintenance of equipment or accessories.~~

(17)[(46)] "Tow truck operator" means an individual ~~that~~ who performs operations related to a tow truck service as an employee or as an independent contractor on behalf of a tow truck motor carrier.

(18)[(47)] "Tow truck service" means the functions and ancillary operations associated with recovering, removing, and towing a vehicle and its load from a highway or other place using 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 the classification category of towed vehicles 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.

(19)[(48)] "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 - Complaints, 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, and equipment for inspection and examination. It must 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) ~~[A-H-t]~~ Tow truck motor carriers performing consent or non-consent tows are required to obtain an 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 must be maintained at the principal place of business and made available to the Department or Investigator upon request and before 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 by reference or a Departmental order, is subject to:

(a) a civil penalty as authorized by Sections 72-9-701, and 72-9-703;

(b) suspension or revocation of a carrier, operator, 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 under Section 72-9-303.

R909-19-7. Towing Notice Requirements.

(1) ~~[A-H]~~ ~~[N]~~ ~~[a]~~ on-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 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 ~~[aH]~~ 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 outboard motor that was towed or for which a drop fee is paid.

(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, <https://www.udot.utah.gov/connect/business/motor-carriers/tow-trucks/utah-bill-of-rights-regarding-towing/>.

(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) ~~[O]~~ 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://app.udot.utah.gov/public/mcs/f?p=345:3:::3> or by contacting the Motor Carrier Division at (801) 965-4892.

R909-19-8. ~~[Certification.]Required Tow Truck Operator Certification.~~

~~[There are three certifications required by the Department.~~

~~(1) Tow Truck Operator Certification.]~~

~~(a)(1)~~ 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.

~~(b)(2)~~ Information on qualified certification programs may be obtained at the UDOT Motor Carrier Division website at <https://www.udot.utah.gov/connect/business/motor-carriers/tow-trucks/tow-truck-certification/> or by contacting the Motor Carrier Division at (801) 965-4892.

~~(c)(3)~~ Tow truck motor carriers shall ensure that ~~[all]~~ tow truck operators:

~~(a)~~ are properly trained and certified to operate tow truck equipment;

~~(b)~~ are licensed, as required under Sections 53-3-101, through 53-3-909 Uniform Driver License Act;

~~(c)~~ are complying with the requirements under Sections 41-6a-1406 and 72-9-603;

~~(d)~~ have cleared the criminal background check required in Subsections 72-9-602(2) and (3).

(i) In addition, a tow truck motor carrier must notify the Department of a tow truck operator who is not in compliance with Subsection 72-9-602(3) within two business days of obtaining knowledge from the Bureau of Criminal Identification.

~~(e)~~ obtain and maintain a valid medical examiner's certificate under 49 CFR Sec 391.45.

~~(2) Tow Truck Vehicle Certification.]~~

R909-19-9. Required Tow Truck Vehicle Certification.

~~(1) [All]~~ Tow trucks shall receive and pass a tow truck certification inspection biannually.

~~(2) [All]~~ Tow trucks must be equipped with the required safety equipment. Safety Equipment List can be found at <https://www.udot.utah.gov/connect/business/motor-carriers/tow-trucks/tow-truck-certification/> or by calling 801-965-4892.

~~(3)~~ Upon vehicle certification, an UDOT certification sticker will be issued and shall be affixed to the driver's side rear window.

~~(4)~~ Documentation of UDOT tow truck vehicle certification shall be retained and available upon request by Department personnel.

~~(3) Tow truck motor carrier Certification.]~~

R909-19-10. Required Tow Truck Motor Carrier Certification.

~~(a)~~ Tow truck motor carriers shall be certified bi-annually to ensure compliance as required by the Federal Motor Carrier Safety Regulations, Utah Code Annotated, Utah Administrative Code, and local laws ~~[where]~~ when applicable.

~~[R909-19-9. Certification Fees.]R909-19-11. 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.]R909-19-12. 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 paying customer. The receipt must include the following information:

- (a) company name;
- (b) address;
- (c) phone number;
- (d) transportation, administration, fuel surcharge, storage fees, and after-hours fees charged;
- (e) name of company driver;
- (f) unit number;
- (g) the 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.

(2) Any charges for a consent tow should be listed on a separate towing receipt.

~~[R909-19-11. Non-Consent Towing Fee.]R909-19-13. 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 <https://www.udot.utah.gov/connect/business/motor-carriers/tow-trucks/>.

(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]~~ that vehicle before the tow truck motor carrier is in possession of the vehicle, no fee shall be charged to the vehicle owner.

(d)(i) 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 tow truck motor carrier shall relinquish the vehicle to the owner, authorized operator, or authorized agent of the owner upon payment of a drop fee. ~~[the maximum fee shall not exceed 50% of the posted rate schedule.]~~

(ii) A tow truck motor carrier may not charge a drop fee that exceeds 50% of the posted rate schedule.

NOTICES OF PROPOSED RULES

(e) Charges for recovery operations, as defined by Section R909-19-3, shall be coordinated with the towed vehicle owner, or directed by law enforcement before 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 a 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.]R909-19-14. 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 the dispatch location ~~[shall]~~ may not exceed the 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 Subsections 72-9-603(1)(a)(i) and 41-6a-1406(4)(a)(ii).

~~[R909-19-13. Non-consent Towing Storage Fee.]R909-19-15. Non-consent Towing Storage Fee.~~

(1) Daily storage fees for non-consent ~~[P]~~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 \$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; ~~and~~

(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 owners, or a law enforcement agency or highway authority.

(b) Vehicles used in the transportation of materials found to be hazardous ~~in accordance with [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) To calculate 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.

~~(d) Storage fees may only be charged if the place of storage is a state impound yard that meets the requirements of rules made by the commission under Subsection 41-1a-1101(5).~~

~~(e) A tow truck motor carrier vehicle must store towed vehicles within the county where the tow occurred.~~

~~[R909-19-14. Non-consent Fuel Surcharge Fee.]R909-19-16. Non-consent Fuel Surcharge Fee.~~

(1) A tow truck motor carrier may charge a fuel surcharge ~~[when]~~ if 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 3% of the base tow rate. An additional 3% 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 US Energy Information Administration's website at <https://www.eia.gov/>.

(b) The fuel surcharge may be charged on non-consent police-generated tow ~~[when]~~ if the vehicle is being used in the function of a tow vehicle such as travel to and from the scene and during the operation of equipment for the recovery operation. Non-consent non-police tows may charge a one-time fee.

(c) Surcharge fee shall be listed as a separate fee on the tow bill.

~~[R909-19-15. Non-consent Administrative Fee.]R909-19-17. 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, <https://www.udot.utah.gov/connect/business/motor-carriers/tow-trucks/> 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. Non-consent After Hours Fee.]R909-19-18. Non-consent After-Hours Fee.~~

(1) A tow truck motor carrier may charge for the after-hours release of a vehicle, vessel, or outboard motor stored in response to:

(a) a peace officer dispatch call;

(b) a motor vehicle division call; and

(c) any other call or request where the owner of the vehicle, vessel, or outboard motor has not consented to the removal.

(2) 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 <https://www.udot.utah.gov/connect/business/motor-carriers/tow-trucks/> and the Utah Consumer Bill of Rights Regarding Towing published at <https://site.utah.gov/connect/wp-content/uploads/sites/50/2021/12/Tow-Truck-Bill-of-Rights-Combined-2022-1.pdf>.

(3) The After-hours fee shall be listed as a separate fee on the tow bill.

~~[R909-19-17. Tow Truck Service and Administrative Fee Adjustment.]R909-17-19. Tow Truck Service and Administrative Fee Adjustment.~~

(1) The Motor Carrier Division will establish the allowable maximum fee for a tow truck service and administrative fee for reporting the removal, as per Section 72-9-603.

The Towing Fees Schedule is published on the Division's website at <https://www.udot.utah.gov/connect/business/motor-carriers/tow-trucks/>.

(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 US. The CPI-W is calculated by the US Department of Labor, Bureau of Labor and Statistics (BLS), which publishes CPI Detailed Report Tables ~~[every]~~each month on its website 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 Subsection 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 before 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.

~~[R909-19-18. Public Consent Towing and Storage Rates.]R909-19-20. 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 provided and are not regulated by the Department.

~~[R909-19-19. Rates and Storage Posting Requirements.]R909-19-21. 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.

~~[R909-19-20. Federal Motor Carrier Safety Requirements.]R909-19-22. 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.

~~[R909-19-21. Consumer Protection Information.]R909-19-23. 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 <https://www.udot.utah.gov/connect/business/motor-carriers/tow-trucks/>, or by calling the Motor Carrier Division at (801) 965-4892.

~~[R909-19-22. Establishment of Tow Truck Steering Committee and Work Group.]R909-19-24. Establishment of Tow Truck Steering Committee and Work Group.~~

(1) The Administrator for the Motor Carrier Division will establish a ~~[S]~~steering ~~[C]~~committee to provide advisory information and input.

(2) The Motor Carrier Advisory Board, established by the ~~[Governor]~~Department, will serve as the steering body for regulatory guidance and the Department's certification process.

~~[R909-19-23. Review of Rates, Fees, and Certification Process.]R909-19-25. 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]~~each 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.

~~[R909-19-24. Ability to Petition for Review.]R909-19-26. 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]~~Rule R907-1, Administrative Procedures.

~~[R909-19-25. Record Retention.]R909-19-27. 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.

~~[R909-19-26. Life Essential Property.]R909-19-28. Life-Essential Property.~~

Property that is deemed as life-essential shall be given to the vehicle owner regardless of payment for services provided.

KEY: safety regulations, tow trucks, towing, certifications

Date of Last Change: 2024|~~October 10, 2022~~

Notice of Continuation: May 10, 2021

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

NOTICE OF PROPOSED RULE

TYPE OF FILING: New

Rule or Section Number:	R914-5	Filing ID: 56221
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Agency Information

1. Department:	Transportation	
Agency:	Transportation, Aeronautics	Operations,
Room number:	Administrative Suite, 1st Floor	
Building:	Calvin Rampton Building	
Street address:	4501 S 2700 W	
City, state and zip:	Taylorsville, UT 84129	
Mailing address:	PO Box 148455	
City, state and zip:	Salt Lake City, UT 84114-8455	
Contact persons:		
Name:	Phone:	Email:
Leif Elder	801-580-8296	lelder@utah.gov
Becky Lewis	801-965-4026	blewis@utah.gov
James Godin	801-573-7181	jamesjgodin@agutah.gov

Please address questions regarding information on this notice to the persons listed above.

General Information

2. Rule or section catchline:

R914-5. Advanced Air Mobility Aircraft Registration

3. Purpose of the new rule or reason for the change:

The Department of Transportation (Department) proposes this new rule to establish a registration fee for an unmanned aircraft system and an advanced air mobility system, and to provide for the administration of that registration fee.

This new rule is required by S.B. 24 passed in the 2023 General Session.

4. Summary of the new rule or change:

This new rule establishes a registration and application process for aircraft that are part of an unmanned aircraft system or advanced air mobility system and that are used for commercial operations described under 14 C.F.R. Part 107 or 135.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:

A) State budget:

There is no anticipated substantial cost or savings to the state budget.

However, pursuant to Subsection 72-10-110(7), after deducting the costs of administering aircraft inspections under this rule, the Department shall deposit all remaining registration fees into the Aeronautics Restricted Account, created by Section 72-2-126.

B) Local governments:

There is no anticipated cost or savings to local governments, as this rule only pertains to commercial aircraft that are part of an advanced air mobility system or an unmanned aircraft system.

C) Small businesses ("small business" means a business employing 1-49 persons):

This rule may have a slight fiscal impact on small businesses that leverage advanced air mobility systems or unmanned aircraft systems for commercial purposes because this rule includes a registration fee for operating those aircraft.

Because this is a new rule, the registration process has yet to commence, and the Department cannot ascertain how many small businesses this new rule might affect.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):

This rule may have a slight fiscal impact on non-small businesses that leverage advanced air mobility systems or unmanned aircraft systems for commercial purposes because this rule includes a registration fee for operating those aircraft.

Because this is a new rule, the registration process has yet to commence, and the Department cannot ascertain how many non-small businesses this new rule might affect.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

This rule may have a slight fiscal impact on other persons that leverage advanced air mobility systems or unmanned aircraft systems for commercial purposes because this rule includes a registration fee for operating those aircraft.

Because this is a new rule, the registration process has yet to commence, and the Department cannot ascertain how many persons this new rule might affect.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):

For persons registering an aircraft under this rule with a maximum gross operating weight of less than 55 pounds, compliance with this rule costs \$15.

For persons registering an aircraft under this rule with a maximum gross operating weight of 55 pounds or more, compliance with this rule costs \$100.

G) Regulatory Impact Summary Table (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 will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$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

H) Department head comments on fiscal impact and approval of regulatory impact analysis:

The Executive Director of the Department of Transportation, Carlos M. Bracerias, PE, has reviewed and approved this regulatory impact analysis.

Citation Information

6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:

Section 72-10-102 | Section 72-10-109 | Section 72-10-110

Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 01/17/2024

9. This rule change MAY become effective on: 01/24/2024

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

Agency Authorization Information

Agency head or designee and title:	Carlos M. Bracerias, PE, Executive Director	Date:	11/20/2023
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R914. Transportation, Operations, Aeronautics.

R914-5. Advanced Air Mobility Aircraft Registration.

R914-5-1. Purpose and Authority.

The purpose of this rule is:

(1) to establish a registration fee for an unmanned aircraft system and an advanced air mobility system as provided in Sections 72-10-109 and 72-10-110; and

(2) to provide for the administration of that registration fee.

R914-5-2. Definitions.

As used in this rule:

(1) "Advanced air mobility system" means the same as that term is defined in Section 72-10-102.

(2) "Aircraft" means the same as that term is defined in Section 72-10-102.

(3) "Maximum gross operating weight" means the maximum certified weight determined by the manufacturer at which the aircraft may operate, including everything that is on board or otherwise attached to the aircraft.

(4) "Public aircraft" means the same as that term is defined in Section 72-10-102.

(5)(a) "Qualifying aircraft" means an aircraft that is:

(i) part of an advanced air mobility system or an unmanned aircraft system; and

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(ii) used for commercial operation for which certification is required under 14 C.F.R. Part 107 or 135.

(b) "Qualifying aircraft" does not include:

(i) a public aircraft;

(ii) an aircraft that is subject to property tax under Title 59, Chapter 2, Property Tax Act;

(iii) an aircraft owned by a Utah institution of higher education or technical college unless the aircraft is used to carry persons or goods for commercial purposes;

(iv) an aircraft which is owned by a nonresident and registered out of state, if the aircraft remains in the state for a period less than 90 days; or

(iv) aircraft used exclusively for hobby or recreation.

(6) "Unmanned aircraft system" means the same as that term is defined in Section 72-10-102.

R914-5-3. Registration Requirement--Application--Fee.

(1)(a) A person may not operate a qualifying aircraft in this state unless the qualifying aircraft has a current certificate of registration issued by the department as provided in Section 72-10-109.

(b) A certificate of registration must be renewed annually with the department.

(2) To receive an original certificate of registration for a qualifying aircraft or renew an existing certificate of registration, a person shall submit an application to the department as provided in this rule.

(3) An application for aircraft registration under this rule shall contain:

(a) a description of the aircraft, including:

(i) manufacturer;

(ii) model;

(iii) current Federal Aviation Administration registration number; and

(iv) maximum gross operating weight;

(b) the legal name and address of each owner of the qualifying aircraft;

(c) the legal name and address of the person responsible for payment of the registration fee; and

(d) the location where the aircraft is usually used and the storage location of the aircraft when not in use.

(4) As part of the application, an applicant shall include a registration fee as follows:

(a) \$15 for an aircraft with a maximum gross operating weight less than 55 pounds; or

(b) \$100 for an aircraft with a maximum gross operating weight of 55 pounds or more.

(5) The department may send a notice to businesses that are reasonably likely to own and operate a qualifying aircraft informing the business that they may own an aircraft that is subject to registration under this rule.

(6) The department, or its agent, may conduct compliance audits and inspections as needed to enforce applicable state laws and rules related to aircraft registration under this rule.

(7) The department may suspend or revoke a registration described in this rule due to a failure to comply with federal or state aviation laws, rules, or regulations.

KEY: aircraft registration, drone, fee

Date of Last Change: 2024

Authorizing, and Implemented or Interpreted Law: 72-10-102; 72-10-109; 72-10-110

NOTICE OF PROPOSED RULE

TYPE OF FILING: Repeal and Reenact

Rule or Section Number:

R918-4

Filing ID:
56225

Agency Information

1. Department:	Transportation		
Agency:	Operations, Maintenance		
Room number:	Administrative Suite, 1st Floor		
Building:	Calvin Rampton Building		
Street address:	4501 S 2700 W		
City, state and zip:	Taylorsville, UT 84129		
Mailing address:	PO Box 148455		
City, state and zip:	Salt Lake City, UT 84114-8455		
Contact persons:			
Name:	Phone:	Email:	
Leif Elder	801-580-8296	lelder@utah.gov	
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James Godin	801-573-7181	jamesjgodin@agutah.gov	
Lori Lee Edwards	385-341-3414	loriedwards@agutah.gov	

Please address questions regarding information on this notice to the persons listed above.

General Information

2. Rule or section catchline:

R918-4. Using Volunteer Groups and Third-Party Contractors for the Adopt-a-Highway and Sponsor-a-Highway Litter Pickup Programs

3. Purpose of the new rule or reason for the change:

The Department of Transportation (Department) has discontinued its Adopt-a-Highway program, but a volunteer highway litter removal program will remain in place.

The reenacted rule establishes a regulatory framework for individuals or groups who volunteer to remove litter from the state's highways.

It also sets forth the requirements for entities participating in the Sponsor-a-Highway Program.

4. Summary of the new rule or change:

The repealed Rule R918-4 contained provisions establishing the application process and the conditions associated with the Adopt-a-Highway Program, see the current Sections R918-4-2 and R918-4-3. These provisions do not exist in the reenacted Rule R918-4.

The repealed Rule R918-4 contained explicit sections for the Department's discretion to allow use of right-of-way (Section R918-4-5); recognition signs (Section R918-4-6); and the Department's responsibilities (Section R918-4-8). These provisions no longer exist in explicit sections and are instead incorporated into the reenacted Sections R918-4-3 and R918-4-4.

The provisions contained in the repealed Section R918-4-7, Replacement of Signs, do not exist in the reenacted rule.

The reenacted rule adds a definition section (Section R918-4-2), adds provisions establishing the requirements for individuals and groups participating in a volunteer litter removal program (Section R918-4-3), and expands upon the conditions of participating in the Sponsor-a-Highway Program (Section R918-4-4).

Fiscal Information**5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:****A) State budget:**

There is no anticipated cost or savings to the state budget, as this rule is clerical in nature and will have no impact on how the Department functions or the parties this applies to.

B) Local governments:

This rule change is not expected to have a fiscal impact on local governments' revenues or expenditures.

This rule change only sets forth the requirements for individuals or groups wishing to participate in a volunteer program for litter cleanup, or entities participating in the Sponsor-a-Highway Program. There is no tangible cost associated with participating in such a program.

C) Small businesses ("small business" means a business employing 1-49 persons):

This rule change will not have a fiscal impact on small businesses.

This rule change only sets forth the requirements for individuals or groups wishing to participate in a volunteer program for litter cleanup, or entities participating in the Sponsor-a-Highway Program. There is no tangible cost associated with participating in such a program.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):

This rule change will not have a fiscal impact on non-small businesses.

This rule change only sets forth the requirements for individuals or groups wishing to participate in a volunteer program for litter cleanup, or entities participating in the Sponsor-a-Highway Program. There is no tangible cost associated with participating in such a program.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

This rule change will not have a fiscal impact on other persons.

This rule change only sets forth the requirements for individuals or groups wishing to participate in a volunteer program for litter cleanup, or entities participating in the Sponsor-a-Highway Program. There is no tangible cost associated with participating in such a program.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):

This rule change does not create compliance costs for affected persons.

This rule change only sets forth the requirements for individuals or groups wishing to participate in a volunteer program for litter cleanup, or entities participating in the Sponsor-a-Highway Program. There is no tangible cost associated with participating in such a program.

G) Regulatory Impact Summary Table (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 will be included in narratives above.)**Regulatory Impact Table**

Fiscal Cost	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0

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Fiscal Benefits	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$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

H) Department head comments on fiscal impact and approval of regulatory impact analysis:

The Executive Director of the Department of Transportation, Carlos M. Braceras, PE, has reviewed and approved this regulatory impact analysis.

Citation Information

6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:

Section 72-1-201		
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Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	01/17/2024
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9. This rule change MAY become effective on:	01/24/2024
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NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

Agency Authorization Information

Agency head or designee and title:	Carlos M. Braceras, PE, Executive Director	Date:	11/21/2023
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R918. Transportation, Operations, Maintenance.

~~R918-4. Using Volunteer Groups and Third-Party Contractors for the Adopt-a-Highway and Sponsor-a-Highway Litter Pickup Programs.~~

~~R918-4-1. Purpose and Authority.~~

~~The purpose of this rule is to establish a procedure for using volunteer groups and third-party contractors for litter pickup and to provide additional resources to increase UDOT's litter control effort at a minimal cost. This program is not operated to provide a highway signing program for a free speech forum. This rule is enacted under the general rulemaking authority in Section 72-1-201.~~

~~R918-4-2. Application for the Adopt-A-Highway Program.~~

~~(1) A group or person who wishes to participate in a program to pick up litter along UDOT right-of-way may apply with the UDOT Region in which the right-of-way is located. The application will contain, at a minimum, the name of the organization or person, the right-of-way requested, along with alternatives if desired, the name and address of a contact person, and the name of the sponsoring organization requested to be placed on the Recognition Sign. UDOT may provide an application form or agreement to formalize the terms and conditions of this rule.~~

~~(2) If the name of an organization is to appear on the sign, the applicant must submit, upon request, documentation from the state showing the form, status, and official name of the entity. Only the official name of the organization will be printed on the sign.~~

~~(3) UDOT also coordinates a program similar to Adopt-A-Highway, known as Sponsor-A-Highway, wherein a private contractor performs the actual litter pickup on behalf of local businesses or other entities ("sponsors") in return for a sponsorship fee. The sponsoring entity is recognized with a sign. A business, government entity, group, or person who wishes to participate in the Sponsor-A-Highway program may apply to the contractor. The contractor must submit the name of the entity, sponsorship segment, and proposed Sponsor-A-Highway sign rendering to UDOT for approval.~~

~~R918-4-3. Conditions of Adopt-A-Highway Participation.~~

~~If the Adopt-A-Highway application is granted, UDOT will notify the applicant's contact person in writing and promptly send to him or her a contract that sets forth the following basic conditions:~~

- ~~(1) the location of the right-of-way;~~
- ~~(2) a hold harmless agreement, waiver of liability, and indemnification for third-party claims;~~
- ~~(3) safety rules;~~
- ~~(4) information concerning safety apparel that must be used and that which is recommended;~~
- ~~(5) the name of the entity or organization that is applying for the permit;~~
- ~~(6) an explanation of the condition in which UDOT expects the applicant to keep the roadway and notification that the decision whether the applicant has done so is solely within UDOT's discretion;~~
- ~~(7) notification of reasons for termination, which include failure to comply with any part of the agreement, fraud in the application, failure to follow safety requirements or commands;~~
- ~~(8) a date when the agreement will terminate, along with any automatic renewal provisions;~~
- ~~(9) volunteer groups must provide a responsible supervisor to properly control the activities of the group, with the expertise and degree of supervision to be decided by UDOT;~~
- ~~(10) no person under the age of fourteen years may participate in the litter pick-up program or be on the right-of-way;~~

- ~~_____ (11) volunteers must accept and receive safety instructions by the Region Safety/Risk Manager, or designee;~~
- ~~_____ (12) volunteers must stay off the traveled area of the roadway, except when traveled area must be crossed, with any crossing being done by the entire group together along with the signing, flagging, or supervision directed by the Region Safety/Risk Manager or designee;~~
- ~~_____ (13) volunteers must stay off the traveled areas of Interstate Routes, Freeways, and divided highways at all times;~~
- ~~_____ (14) in areas where the Region Director or Safety/Risk Manager or Traffic Engineer believes it appropriate, the applicant must use advance warning signs;~~
- ~~_____ (15) work must be done during daylight hours;~~
- ~~_____ (16) such other information as UDOT believes may be required to adequately advise the applicant of its responsibilities and provide for the public safety;~~
- ~~_____ (17) clean up the assigned right of way at least three times a year as well as when UDOT specifically requests; and~~
- ~~_____ (18) notify UDOT as soon as reasonably possible if they find items that appear suspicious or unsafe, i.e., syringes, drug paraphernalia, or closed containers.~~

R918-4-4. Conditions of Sponsor A Highway Participation.

- ~~_____ A business, government entity, group, or person participating in the Sponsor A Highway program must:~~
- ~~_____ (1) be legally empowered to enter a contract in the state of Utah; and~~
- ~~_____ (2) use their legal name or a registered DBA name.~~

R918-4-5. UDOT discretion to allow use of right of way.

- ~~_____ (1) Nothing in this rule or any other UDOT rule may be construed to require UDOT to make any portion of right of way available for litter pick up. The decision whether to do so is exclusively within UDOT's discretion. Similarly, the decision to take a route out of the litter pick up program is also within UDOT's exclusive discretion even if the route is currently available and being used for litter pick up.~~
- ~~_____ (2) Should UDOT determine that a route no longer qualifies for participation in the Adopt a Highway program, UDOT will notify the person or organization assigned the route of that determination. The notification constitutes termination of the contract, regardless of how much time is left on the contract.~~
- ~~_____ (3) UDOT may also terminate a contract at any time if it determines that continuing the contract would be counterproductive to the program's purpose or have undesirable results such as vandalism, increased litter, or would otherwise jeopardize the safety of the participants, the traveling public, or UDOT employees.~~

R918-4-6. Recognition Signs.

- ~~_____ (1) If the applicant's authorized representative (contact person) signs the contract provided by UDOT, UDOT will place a recognition sign along the route, if all other conditions are met. UDOT will not place either slogans or logos on Adopt A Highway signs. The name may be edited to comply with space limitations.~~
- ~~_____ (2) Slogans, DBA names, registered trademarks, and registered service marks may be included on Sponsor A Highway signs, subject to UDOT review and approval.~~

R918-4-7. Replacement of Signs.

- ~~_____ (1) Adopt A Highway Signs: UDOT will not replace damaged or missing signs unless the damage was due to weather or~~

~~other natural cause and then only if there is sufficient funding. In no case will UDOT replace a sign more than once every five years.~~

- ~~_____ (2) Sponsor A Highway Signs: Sponsor A Highway signs remain the property of the Sponsor A Highway contractor.~~

R918-4-8. UDOT's Responsibilities.

- ~~_____ UDOT will:~~
- ~~_____ (1) furnish volunteers with UDOT standard vests, which must be returned after cleanup activities are completed;~~
- ~~_____ (2) furnish litter bags, which, when filled, must be placed along the shoulder of the road for collection by UDOT personnel;~~
- ~~_____ (3) furnish advance warning signs in areas where the Region Director, Safety/Risk Manager, or Traffic Engineer believes it appropriate; and~~
- ~~_____ (4) install contractor furnished Sponsor A Highway signs at locations designated by the Region Traffic Engineer and maintain the sign base, posts, and mounting hardware.]~~

R918-4. Using Volunteers and Third-Party Contractors for Litter Control.

R918-4-1. Purpose and Authority.

This rule establishes UDOT's requirements for authorizing volunteers and third-party contractors to assist in litter control in UDOT right-of-way, including along roadways and trails. This rule is enacted under the general rulemaking authority granted to UDOT in Section 72-1-201.

R918-4-2. Definitions.

- As used in this rule:
- (1) "Sponsor-a-Highway Program" means a program in which a third-party contractor, approved by UDOT, provides litter control along a segment of UDOT right-of-way on behalf of a sponsoring entity.
- (2) "UDOT" means the Utah Department of Transportation.
- (3) "Volunteer program" means a program in which an individual or group volunteers to provide one-time litter cleanup along a segment of UDOT right-of-way.

R918-4-3. Requirements for Individuals and Groups to Participate in a Volunteer Program for Litter Cleanup.

- (1) Before an individual or group may participate in a volunteer program to clean up litter along a segment of UDOT right-of-way:
 - (a) the individual or group must complete and submit an online application, in a form prescribed by UDOT, at UDOT's website; and
 - (b) the individual or each member of a group seeking to participate in the volunteer program must sign, in a form prescribed by UDOT, a release and liability waiver.
- (2) At UDOT's discretion, UDOT may deny an application to participate in a volunteer program or revoke a previously approved application for any reason.
- (3) While participating in a volunteer program, each participant in the volunteer program shall agree to:
 - (a) stay off traveled areas of interstate routes, freeways, and divided highways at all times, and only cross other roadways at designated crossings;
 - (b) if required by UDOT, use advance warning signs furnished by UDOT;
 - (c) perform litter cleanup only at the location and on the date and time agreed to by UDOT and, in any event, only during daylight hours;

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(d) notify a UDOT representative as soon as practicable if suspicious or unsafe materials are noticed along the right-of-way, including syringes, drug paraphernalia, or closed containers; and

(e) follow all other requirements required by UDOT to maintain the safety of volunteer program participants and other members of the public.

(4)(a) At UDOT's discretion, or at the request of a participating individual or group, UDOT will furnish litter bags and safety equipment to volunteer program participants.

(b) When UDOT supplies litter bags and safety equipment to volunteer program participants, volunteer program participants shall use the litter bags and safety equipment as instructed by UDOT.

(5) To participate in a volunteer program, a participant must be at least 14 years of age.

R918-4-4. Requirements for the Sponsor-a-Highway Program.

(1) UDOT may enter into an agreement with one or more third-party entities to operate a Sponsor-a-Highway Program.

(2) After entering into an agreement with UDOT to operate a Sponsor-a-Highway Program, the third-party entity may enter into an agreement with one or more local businesses or other sponsoring entities whereby the third-party entity agrees, in exchange for payment from the local business or other sponsoring entity, to:

(a) clean up litter on one or more segments of UDOT right-of-way along a UDOT highway; and

(b) to install and maintain on the corresponding segments of UDOT highway one or more acknowledgment signs with the name or logo of the local business or other sponsoring entity.

(3) Any local business or other sponsoring entity participating in the Sponsor-a-Highway Program must:

(a) be legally authorized to enter a contract in the state; and

(b) use the entity's legal name or a registered DBA name.

(4) Before installing an acknowledgment sign under Subsection (2), a third-party entity must obtain approval from UDOT regarding the size, information on, and location of the acknowledgment sign.

(5) Before performing maintenance on an acknowledgment sign under Subsection (2), a third party must obtain approval from UDOT.

(6) Subject to UDOT approval, an acknowledgment sign under the Sponsor-a-Highway Program may contain any combination of a local business's or other sponsoring entity's slogans, DBA names, registered trademarks, or registered service marks.

(7) The Sponsor-a-Highway Program is not intended as a free speech forum.

(8) UDOT may at any time and for any reason:

(a) revoke the right for a third-party entity, a local business, or other sponsoring entity to participate in the Sponsor-a-Highway Program; and

(b) remove a Sponsor-a-Highway Program acknowledgment sign.

KEY: adopt-a-highway, sponsor-a-highway, litter, volunteer

Date of Last Change: ~~2024~~**March 26, 2019**

Notice of Continuation: September 15, 2023

Authorizing, and Implemented or Interpreted Law: 72-1-201

NOTICE OF PROPOSED RULE

TYPE OF FILING: Amendment

Rule or Section Number:

R940-6

Filing ID:
56222

Agency Information

1. Department:	Transportation Commission	
Agency:	Administration	
Room no.:	Administrative Suite, 1st Floor	
Building:	Calvin Rampton Building	
Street address:	4501 S 2700 W	
City, state and zip:	Taylorsville, UT 84129	
Mailing address:	PO Box 148455	
City, state and zip:	Salt Lake City, UT 84114-8455	
Contact person(s):		
Name:	Phone:	Name:
Leif Elder	801-580-8296	lelder@utah.gov
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James Godin	801-573-7181	jamesjgodin@agutah.gov
Lori Edwards	801-965-4048	loriedwards@agutah.gov

Please address questions regarding information on this notice to the persons listed above.

General Information

2. Rule or section catchline:

R940-6. Prioritization of New Transportation Capacity Projects

3. Purpose of the new rule or reason for the change:

This rule change clarifies or otherwise updates the language in Rule R940-6 and incorporates changes to the prioritization process for transportation projects approved by the Transportation Commission at its August 2023 meeting.

4. Summary of the new rule or change:

This is the rule that sets forth the process for prioritizing TIF highway projects, TIF active projects, TTIF transit projects, and TTIF first/last mile projects. The Department of Transportation (Department) and Transportation Commission (Commission) have worked on revising these processes over the last year.

At its August 2023 meeting, the Commission gave final approval to the prioritization process changes. This rule incorporates the document that describes the process and specifies the meeting at which the Commission approved it. In the future, if the Commission approves changes to the prioritization document, this rule will have to be modified to reflect the new approval date.

Other changes to the rule include:

- 1) modifying the web address for the prioritization document;
- 2) clarifying what capacity means for a TTIF transit project;
- 3) harmonizing matching requirements with recently passed legislation;
- 4) clarifying how the match requirement will be calculated;
- 5) updating rule language dealing with projects that are included on the input list to be consistent with current practices; and
- 6) updating language to conform with the Rulewriting Manual for Utah.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:

A) State budget:

There is no anticipated cost or savings to the state budget, as this rule is clerical in nature.

B) Local governments:

This rule change is not expected to have a fiscal impact on local governments' revenues or expenditures.

This rule change only clarifies pre-existing requirements for local governments.

C) Small businesses ("small business" means a business employing 1-49 persons):

This rule change will not have a fiscal impact on small businesses.

This rule only affects the Department and local governments.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):

The proposed rule change does not have a fiscal impact on non-small businesses nor will a service be required of them to implement the amendments.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

The proposed rule change does not have a fiscal impact on other persons nor will a service be required of them to implement the amendments.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):

There are no compliance costs for affected persons.

The changes simply add clarification to requirements and policy with no fiscal impact on other entities.

G) Regulatory Impact Summary Table (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 will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$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

H) Department head comments on fiscal impact and approval of regulatory impact analysis:

The Executive Director of the Department of Transportation, Carlos M. Braceras, PE, has reviewed and approved this regulatory impact analysis.

Citation Information

6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:

Section 72-1-201	Section 72-1-304	
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Incorporations by Reference Information**7. Incorporations by Reference:**

A) This rule adds, updates, or removes the following title of materials incorporated by references:

Official Title of Materials Incorporated (from title page)	Section 72-1-304 Written project prioritization process for new transportation capacity projects - Rulemaking
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Publisher	Utah Code Annotated
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Issue Date	May 3, 2023
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Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	01/17/2024
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9. This rule change MAY become effective on:	01/24/2024
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NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

Agency Authorization Information

Agency head or designee and title:	Carlos M. Bracer, PE, Executive Director	Date:	11/20/2023
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R940. Transportation Commission, Administration.**R940-6. Prioritization of New Transportation Capacity Projects.****R940-6-1. Authority and Purpose.**

(1) ~~Authority.~~ The commission makes this administrative rule pursuant to authority delegated by Subsection 72-1-304(4).

(2) ~~Purpose.~~ This administrative rule is to provide a procedure the commission will follow to satisfy the requirements of Section 72-1-304.

R940-6-2. Definitions.

(1) "Commission" means the Utah Transportation Commission created by Subsection 72-1-301(1).

(2) "Department" means the Utah Department of Transportation created by Subsection 72-1-201(1).

(3) "Department ~~a~~pproved ~~a~~ctive ~~t~~ransportation ~~p~~lan" means an active transportation plan approved by the ~~d~~epartment.

(4) "District" means a ~~p~~ublic ~~t~~ransit ~~d~~istrict established in accordance with Title 17B Limited Purpose Local Government Entities - Special Districts.

(5) "Fixed ~~g~~uideway ~~p~~ublic ~~t~~ransit" means a public transit facility that uses or occupies rail for the use of public transit or a separate right-of-way for the use of public transit such as bus rapid transit systems.

(6) "Fund ~~a~~llocation ~~p~~ercentage" means the ~~[percentage of funding]~~ fund request amount as a percentage of the total funding amount for a TIF ~~a~~ctive ~~t~~ransportation project, TTIF ~~f~~irst and ~~l~~ast ~~m~~ile project, or TTIF ~~t~~ransit ~~t~~ransit project ~~coming from TIF or TTIF funds~~.

(7) "Fund ~~r~~quest ~~a~~mount" means the funding amount requested by a local government or district from either TIF or TTIF for a TIF ~~a~~ctive ~~t~~ransportation project, TTIF ~~f~~irst and ~~l~~ast ~~m~~ile project, or TTIF ~~t~~ransit project.

(8) "In-kind match" means ~~a~~ non-cash ~~match~~ ~~match~~es including ~~a~~ service ~~s~~ ~~(labor)~~, right-of-way, construction materials, or labor/equipment time valued at fair market value.

(9) "Input ~~l~~ist" means the list of projects that will be used in the prioritization process.

(10) "Match" means the ~~[-40%]~~ matching funds ~~used to meet the matching requirement~~ ~~required by and~~ ~~described~~ ~~detailed~~ in Section 72-2-124.

(11) "Long-~~r~~ange ~~t~~ransportation ~~p~~lan" or "LRP" means any one of the five plans developed by the department and the state's four MPOs that forecast the state's transportation needs for the next 20-plus years, also known as ~~a~~ ~~the~~ ~~r~~egional ~~t~~ransportation ~~p~~lan ~~s~~ or RTP ~~s~~.

(12) "Metropolitan ~~p~~lanning ~~o~~rganization" or "MPO" means the same as it is defined by Subsection 72-1-208.5(1).

(13) "Required ~~m~~atch ~~p~~ercentage" means the match percentage required for TIF ~~a~~ctive ~~t~~ransportation projects, TTIF ~~f~~irst and ~~l~~ast ~~m~~ile projects, and TTIF ~~t~~ransit projects ~~described in Section 72-2-124~~.

(14) "Statewide ~~s~~trategic ~~i~~nitiative" or "SSI" means initiatives the ~~d~~epartment is required by Section 72-1-211 to develop and adopt ~~by Section 72-1-211~~.

(15) "Strategic ~~g~~oals" means the ~~department~~ ~~Utah Department of Transportation~~'s strategic goals.

(16) "TIF ~~a~~ctive ~~t~~ransportation ~~p~~rojects" means paved pedestrian or paved nonmotorized transportation projects per Section 72-2-124.

(17) "TIF ~~h~~ighway ~~p~~rojects" means projects on state and federal highways per Section 72-2-124.

(18) "Total funding amount" means the summation of the fund request amount and the match, including the value of any in-kind match.

(19) ~~(8)~~ "Transportation ~~i~~nvestment ~~f~~und" or "TIF" means the capital projects fund created in 2005 by Subsection 72-2-124(1).

(20) ~~(9)~~ "Transit ~~t~~ransportation ~~i~~nvestment ~~f~~und" or "TTIF" means the fund within the Transportation Investment Fund of 2005 created by Subsection 72-2-124(9).

(21) ~~(9)~~ "TTIF ~~f~~irst and ~~l~~ast ~~m~~ile ~~p~~rojects" means pedestrian or nonmotorized transportation projects that ~~provide~~ ~~provides~~ connection to a public transit system ~~as described in~~ ~~per~~ Section 72-2-124.

(22) ~~(1)~~ "TTIF ~~t~~ransit ~~p~~rojects" means public transit capital development projects ~~as described in~~ ~~per~~ Section 72-2-124.

(23[2]) "UDOT p[P]anning" or "p[P]anning" means the Planning Division of the Program Development Group of the department[Utah Department of Transportation].

R940-6-3. Prioritization Requirements.

The commission, in consultation with the department and the MPOs, will develop a written prioritization process to determine priorities and funding levels of TIF active transportation. TTIF first and last mile, TIF highway, TTIF transit projects[~~in the state transportation systems and capital development of new public transit facilities for each fiscal year~~], taking into consideration the department's s[S]tatewide s[S]trategic i[I]nitiatives described in Section 72-1-211 and the department's strategic goals.

R940-6-4. Prioritization Process.

(1) ~~The document "Prioritization Process Documentation," which was developed pursuant to the requirements of Section 72-1-304 (May 3, 2023) and was approved by the commission at its August 18, 2023 meeting, is incorporated by reference and may be accessed at <https://projectprioritization.udot.utah.gov/models>. [The commission's written prioritization process, developed pursuant to the requirements of Section 72-1-304 and called "New Transportation Capacity Project Prioritization Process," having been reviewed and its implementation voted on in a properly noticed public meeting, is incorporated by reference and may be accessed at this Internet address: <https://projectprioritization.udot.utah.gov/projectprioritizationprocess>.]~~

(2) The commission will provide notice of proposed amendments to the prioritization process in a public meeting, and provide an opportunity for public comments [prior to] before amending the prioritization process. Amendments to the prioritization process will not affect projects that have already been funded.

(3)(a) If a state highway capacity project[TIF Highway Project] is identified in p[P]hase 1 of an[the] LRP and the total project cost estimate is more than \$5,000,000 it will be included in the i[I]nput l[L]ist for TIF highway projects.

(b) The commission may consider additional TIF highway projects for prioritization beyond those identified in p[P]hase I of an[the] LRP if during the development of the LRP the projects[they] were determined to be a p[P]hase I need.

~~(3) If a TIF Active Transportation Project is in a Department Approved Active Transportation Plan and designated by the department, in consultation with the MPOs, as regionally important it will be included in the Input List.]~~

(4)(a) If a public transit capital development project of new capacity[TTIF Transit Project] is identified in p[P]hase 1 of an[the] LRP it will be included in the i[I]nput l[L]ist for TTIF transit projects.

(b)[a] The commission may consider additional TTIF transit projects for prioritization beyond those identified in p[P]hase I of an[the] LRP if during the development of the LRP the projects[they] were determined to be a p[P]hase I need.

R940-6-5. Requirements and Process for Project Nomination by Local Government or District.

(1) Local governments or districts may nominate projects for prioritization.

(2) The nomination requirements are[process is] as follows:

(a) TIF Highway Projects.

(i) A local government or district may nominate a project to the commission at this i[I]nternet address: <https://projectprioritization.udot.utah.gov/nominations>[~~udot.utah.gov/go/projectprioritizationprocess~~].

Nominations must identify the project sponsor's name, address, phone number, and email address and include a detailed description of the nominated project including why the project is important to the local government or district. The local government or district must also demonstrate that the nominated project:

(A) is on a state highway; or

(B) will likely result in a road that meets the criteria of a state highway as described in Section 72-4-102.5 and that the local government wants designated as a state highway.

~~[(ii) The commission will determine if the nominated projects will be included in the Input List. The factors used in this determination may include, but are not limited to the following:~~

~~(A) If, during the development of the LRP, the Project was determined to be a Phase I need.~~

~~(B) If there are any proposed additional funding sources.]~~

(b) TIF Active Transportation Projects.

(i) A local government or district may nominate a project to the commission[Transportation Commission] at this i[I]nternet address:

<https://projectprioritization.udot.utah.gov/nominations>[~~udot.utah.gov/go/projectprioritizationprocess~~]. Nominations must identify the project sponsor's name, address, phone number, and email address and include a detailed description of the nominated project. The local government or district[nomination] must also demonstrate that the nominated project meets the following requirements:

(A) ~~[That]the project is part of~~[in] a d[D]epartment a[A]pproved a[A]ctive t[T]ransportation p[P]lan; ~~and~~

(B) ~~[that]the project will mitigate traffic congestion on the state highway system;~~ ~~and~~

(C) there is an ongoing funding plan for maintenance and operations;~~[that the local government or district will be responsible for the maintenance of the facility; and]~~

(D) ~~[how]the match requirement will be met~~[match will be met];

(E) there is a reasonable cost estimate for the project and sufficient information to explain the reasoning behind the estimate; and

(F) there is a plan to address any costs that exceed the local government's or district's cost estimate.

~~[(I) The match may be an in-kind match; and~~

~~(II) The required match amount will be calculated as follows:~~

~~The Fund Request Amount divided by the Fund Allocation Percentage multiplied by the Required Match Percentage.~~

~~For example:~~

~~For a Fund Request Amount of \$600,000 a Fund Allocation Percentage of 60 % and a Required Match Percentage of 40 % the required match amount would be \$400,000. (\$600,000 divided by 0.6) times 0.4 equals \$400,000.~~

~~(III) If a nominated project meets the requirements it will be included in the Input List.~~

~~(IV) The commission may request additional information from the project sponsor.]~~

(c) TTIF Transit Projects.

(i) A local government or district may nominate a project to the Transportation Commission at this i[I]nternet address: <https://projectprioritization.udot.utah.gov/nominations>[~~udot.utah.gov/go/projectprioritizationprocess~~]. Nominations must identify the project sponsor's name, address, phone number, and email address and include a detailed description of the nominated project. The local

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government or district [nomination] must also demonstrate that the nominated project meets the following requirements:

(A) [That t]here is an ongoing funding plan for maintenance and operations. If the project sponsor is a local government, this will require documentation from the transit operator that the project will be accommodated within the transit operator's maintenance and operations plans.

(B) The local government or district will meet the match requirement[How the match will be met].

[(I) The match may be an in-kind match; and

(II) The required match amount will be calculated as follows:

The Fund Request Amount divided by the Fund Allocation Percentage multiplied by the Required Match Percentage.

For example:

For a Fund Request Amount of \$600,000 a Fund Allocation Percentage of 60 % and a Required Match Percentage of 40 % the required match amount would be \$400,000. (\$600,000 divided by 0.6) times 0.4 equals \$400,000.]

(C) If the nominated project would provide new fixed guideway public transit service within an MPO boundary, the project is identified in p[P]hase 1 of an[the] LRP or, during the development of an[the] LRP, the p[P]roject was determined to be a p[P]hase 1 need.

(D) The majority of project costs are for components that directly add capacity to a public transit system such as additional or more frequent bus, fixed guideway public transit, shuttle, street car, or vanpool service.[(I) If a nominated project meets the requirements it will be included in the Input List.

(II) The commission may request additional information from the project sponsor.]

(d) TTIF First and Last Mile Projects.

(i) A local government or district may nominate a project to the commission[Transportation Commission] at this i[I]nternet address:

<https://projectprioritization.udot.utah.gov/nominations>[[udot.utah.gov/projectprioritizationprocess](https://projectprioritization.udot.utah.gov/projectprioritizationprocess)]. Nominations must identify the project sponsor's name, address, phone number, and email address and include a detailed description of the nominated project. The local government or district[nomination] must also demonstrate that the nominated project meets the following requirements:

(A) there is an ongoing funding plan for maintenance and operations:[That the local government or district will be responsible for the maintenance of the facility; and]

(B)[I] the match requirement will be met[How the match will be met]; and

[(II) The match may be an in-kind match; and

(III) The required match amount will be calculated as follows:

The Fund Request Amount divided by the Fund Allocation Percentage multiplied by the Required Match Percentage.

For example: For a Fund Request Amount of \$600,000 a Fund Allocation Percentage of 60 % and a Required Match

Percentage of 40 % the required match amount would be \$400,000. (\$600,000 divided by 0.6) times 0.4 equals \$400,000.]

(C)[B]) [That]the project will connect and improve access to transit.

[(I) If a nominated project meets the requirements it will be included in the Input List.

(II) The commission may request additional information from the project sponsor.]

(3)(a) With the exception of a nominated TIF highway project, the commission will include each nominated project that meets the requirements of Subsection (2) in the applicable input list.

(b) The commission will determine if a nominated TIF highway project will be included in the input list. The factors used in this determination may include the following:

(i) if, during the development of an LRP, a project was determined to be a phase I need; and

(ii) if there are any proposed additional funding sources.

(4) The commission may request additional information for a nominated project from the project sponsor.

(5)(a) A match requirement for a nominated project may include an in-kind match.

(b) To determine whether the match for a nominated project meets the required match percentage, the department will divide the match amount, including the value of any in-kind match, by the total funding amount.

(c) If the amount calculated under Subsection (3)(b) is equal to or greater than the required match percentage, the department will determine the match requirement to be met.

(d) For example, for a project with a required match percentage of 30%, a fund request amount of \$700,000, and a match of \$300,000, the amount calculated under Subsection (c) would be .30 (\$300,000 divided by \$1,000,000). Because .30 equals 30%, the local government or district would meet the match requirement.

R940-6-6. Commission Discretion.

The commission, in consultation with the department, may establish additional criteria or use other considerations in establishing funding levels for TIF active transportation, TTIF first and last mile, TIF highway, TTIF transit[capacity] projects. As provided in Section 72-1-305, if the commission approves funding for a project over another project that has a higher prioritization rank under the criteria set forth in Section R940-6-4, the commission will identify the change, and the reasons for it and accept public comment at a public meeting.

KEY: transportation commission, roads, transit capacity

Date of Last Change: 2024[December 30, 2020]

Notice of Continuation: October 30, 2020

Authorizing, and Implemented or Interpreted Law: 72-1-201; 72-1-304

End of the Notices of Proposed Rules Section

NOTICES OF CHANGES IN PROPOSED RULES

After an agency has published a **PROPOSED RULE** in the *Utah State Bulletin*, it may receive comment that requires the **PROPOSED RULE** to be altered before it goes into effect. A **CHANGE IN PROPOSED RULE** allows an agency to respond to comments it receives.

As with a **PROPOSED RULE**, a **CHANGE IN PROPOSED RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **CHANGE IN PROPOSED RULE** including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

While the law does not designate a comment period for a **CHANGE IN PROPOSED RULE**, it does provide for a 30-day waiting period. An agency may accept additional comments during this period and, at its option, may designate a comment period or may hold a public hearing. The 30-day waiting period for **CHANGES IN PROPOSED RULES** published in this issue of the *Utah State Bulletin* ends January 17, 2024.

Following the **RULE ANALYSIS**, the text of the **CHANGE IN PROPOSED RULE** is usually printed. The text shows only those changes made since the **PROPOSED RULE** was published in an earlier edition of the *Utah State Bulletin*. Additions made to the rule appear underlined (example). Deletions made to the rule appear struck out with brackets surrounding them (~~example~~). A row of dots in the text between paragraphs (.) indicates that unaffected text, either whole sections or subsections, was removed to conserve space. If a **CHANGE IN PROPOSED RULE** is too long to print, the Office of Administrative Rules may include only the **RULE ANALYSIS**. A copy of rules that are too long to print is available from the agency or from the Office of Administrative Rules.

From the end of the 30-day waiting period through April 15, 2024, an agency may notify the Office of Administrative Rules that it wants to make the **CHANGE IN PROPOSED RULE** effective. When an agency submits a **NOTICE OF EFFECTIVE DATE** for a **CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** as amended by the **CHANGE IN PROPOSED RULE** becomes the effective rule. The agency sets the effective date. The date may be no fewer than 30 days nor more than 120 days after the publication date of the **CHANGE IN PROPOSED RULE**. If the agency designates a public comment period, the effective date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date. Alternatively, the agency may file another **CHANGE IN PROPOSED RULE** in response to additional comments received. If the Office of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE** or another **CHANGE IN PROPOSED RULE** by the end of the 120-day period after publication, the **CHANGE IN PROPOSED RULE** filing, along with its associated **PROPOSED RULE**, lapses.

CHANGES IN PROPOSED RULES are governed by Section 63G-3-303, Rule R15-2, and Sections R15-4-3, R15-4-4, R15-4-5b, R15-4-7, R15-4-9, and R15-4-10.

The Changes in Proposed Rules Begin on the Following Page

NOTICE OF CHANGE IN PROPOSED RULE (SECOND)		
Rule or Section Number:	R590-190	Filing ID: 55510
Date of Previous Publications:	07/15/2023 then 10/15/2023	

Agency Information

1. Department:	Insurance	
Agency:	Administration	
Room number:	Suite 2300	
Building:	Taylorsville State Office Building	
Street address:	4315 S 2700 W	
City, state and zip:	Taylorsville, UT 84129	
Mailing address:	PO Box 146901	
City, state and zip:	Salt Lake City, UT 84114-6901	
Contact persons:		
Name:	Phone:	Email:
Steve Gooch	801-957-9322	sgooch@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule or section catchline:
R590-190. Unfair Property, Casualty, and Title Claims Settlement Practices Rule
3. Reason for this change:
The original proposed repeal and reenact and subsequent first change in proposed rule (CPR) of this rule is being changed because the Department of Insurance (Department) has determined that the amendments are more properly made in statute versus rule.
4. Summary of this change:
This filing removes two protections for consumers from Subsection R590-190-11(9) in favor of strengthening the protections by adding them to statute. The protections being removed are anticipated to be added to a bill during the 2024 General Session.
(EDITOR'S NOTE: This is the second change in proposed rule (CPR) for Rule R590-190, ID 55510. The original proposed repeal and reenact upon which the first CPR was based was published in the July 15, 2023, issue of the Utah State Bulletin, on page 39. The first CPR upon which this second CPR is based was published in the October 15, 2023, issue of the Utah State Bulletin, on page 233.

Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the first CPR, the second CPR, and the proposed repeal and reenact together to understand all of the changes that will be enforceable should the agency make this rule effective.)

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
There is no anticipated cost or savings to the state budget; however, any budget estimates will be provided in a fiscal note during the legislative process.
B) Local government:
There is no anticipated cost or savings to local governments; however, any budget estimates will be provided in a fiscal note during the legislative process.
C) Small businesses ("small business" means a business employing 1-49 persons):
There is no anticipated cost or savings to small businesses; however, any budget estimates will be provided in a fiscal note during the legislative process.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
There is an anticipated cost to certain non-small businesses; however, any budget estimates will be provided in a fiscal note during the legislative process.
E) Persons other than small businesses, non-small businesses, or state or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):
There is no anticipated cost or savings to any other persons; however, any budget estimates will be provided in a fiscal note during the legislative process.
F) Compliance costs for affected persons:
There is a compliance cost for automobile insurers to the extent the change requires them to pay more in automobile insurance benefits; however, any budget estimates will be provided in a fiscal note during the legislative process.
G) Regulatory Impact Summary Table (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 will be included in narratives above.)

Regulatory Impact Table			
Fiscal Cost	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$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
H) Department head comments on fiscal impact and approval of regulatory impact analysis:			
The Commissioner of the Department of Insurance, Jonathan T. Pike, has reviewed and approved this regulatory impact analysis.			

Citation Information

6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:		
Section 31A-2-201	Section 31A-21-312	Section 31A-26-301
Section 31A-26-303		

Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the

agency. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 01/17/2024

9. This rule change MAY become effective on: 01/24/2024

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

Agency Authorization Information

Agency head or designee and title:	Steve Gooch, Public Information Officer	Date:	11/28/2023
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R590. Insurance, Administration.**R590-190. Unfair Property, Casualty, and Title Claims Settlement Practices Rule.****R590-190-1. Authority.**

This rule is promulgated by the commissioner pursuant to Sections 31A-2-201, 31A-21-312, 31A-26-301, and 31A-26-303.

R590-190-2. Purpose and Scope.

- (1) The purpose of this rule is to:
- (a) set standards for the investigation and disposition of property, casualty, and title claims; and
 - (b) identify an unfair claim practice.
- (2) This rule applies to:
- (a) a property and casualty insurer;
 - (b) a title insurer; and
 - (c) an authorized agent.

R590-190-3. Definitions.

Terms used in this rule are defined in Section 31A-1-301. Additional terms are defined as follows:

- (1) "Authorized agent" means an individual, corporation, association, organization, partnership, or other legal entity authorized to represent an insurer with respect to a claim.
- (2) "Claim file" means a record either in its original form or as recorded by a process that can accurately and reliably reproduce the original material regarding a claim, its investigation, adjustment, and settlement.
- (3)(a) "Claimant" means a first party claimant, a third party claimant, or both.
- (b) "Claimant" includes a claimant's designated legal representative and an immediate family member.
- (4) "Day" means calendar day.
- (5) "Documentation" means a physical or an electronic record related to a claim.
- (6)(a) "First party claimant" means a person asserting a right to a benefit under a policy to which the person is a party.
- (b) "First party claimant" includes a person's designated legal representative and an immediate family member.
- (7) "General business practice" means a pattern of conduct in a business.

(8) "Investigation" means an activity by or on behalf of an insurer related to determining a claim under a policy.

(9) "Notice of loss" means a claimant's notice that reasonably informs an insurer of facts related to a claim.

(10) "Proof of loss" means an insured's reasonable documentation in support of a claim.

(11) "Third party claimant" means a person asserting a claim against an insured.

R590-190-4. File and Record Documentation.

(1) An insurer's claim file is subject to examination by the commissioner.

(2) To aid in an examination, an insurer shall:

(a) maintain claim data that is accessible and retrievable; and

(b) maintain detailed documentation in each claim file permitting reconstruction of the insurer's activities related to the claim.

R590-190-5. Misrepresentation of Policy Provisions.

(1) An insurer and its representatives shall fully disclose to a first party claimant any pertinent benefit, coverage, or other provision of a policy under which a claim is presented.

(2) An insurer is prohibited from denying a claim based on a first party claimant's failure to make the property available for inspection unless there is documentation of a breach of a policy provision in the claim file.

R590-190-6. Failure to Acknowledge Communication.

(1) An insurer shall acknowledge receiving a notice of loss within 15 days of receipt unless:

(a) payment is made within 15 days of a notice of loss; or

(b) the insurer reasonably explains the failure to acknowledge receipt.

(2) Notice given to an agent of an insurer is notice to the insurer.

(3) Within 15 days, an insurer shall provide a substantive response to a claimant if a response has been requested.

(4) Upon receiving a notice of loss, an insurer shall, within 15 days, provide any necessary claim forms, instructions, and reasonable assistance so that a first party claimant can comply with the policy.

R590-190-7. Notice of Loss.

(1) If a notice of loss is required by an insurer, it is timely if made according to the terms of the policy, this rule, and Section 31A-21-312.

(2) A notice of loss may be given by an insured to an authorized agent, authorized adjuster, or other agent of an insurer unless the insurer directs otherwise pursuant to a specific disclosure.

(3) The general business practice of an insurer when accepting a notice of loss shall be consistent for all policyholders.

R590-190-8. Proof of Loss.

If a proof of loss is required by an insurer, it is timely if made according to the terms of the policy, this rule, and Section 31A-21-312.

R590-190-9. Unfair Claim Settlement Practices.

The commissioner finds that the following acts or general business practices are unfair claim settlement practices and are misleading, deceptive, unfairly discriminatory, overreaching, or an unreasonable restraint on competition in settling a claim:

(1) denying or threatening to deny a claim, or rescinding, canceling, or threatening to rescind or cancel coverage under a policy for a reason that is not clearly described in a policy as a reason for denial, cancellation, or rescission;

(2) failing to provide an insured or a beneficiary a written explanation of the evidence of an investigation or the claim file materials supporting a denial of a claim based on misrepresentation or fraud on an insurance application, if misrepresentation or fraud is the basis for the denial;

(3) compensating an employee, producer, or contractor an amount based on savings to the insurer due to denying payment of a claim;

(4) failing to deliver to the department a copy of an insurer's guidelines during an investigation of a claim, if requested;

(5) refusing to pay a claim without conducting a reasonable investigation;

(6) offering a first party claimant substantially less than a claim's reasonable value as established by an independent source;

(7) making a claim payment to an insured or a beneficiary without a statement or explanation of benefits that describes the coverage under which a payment is made and how a payment amount is calculated;

(8) failing to pay a first party claim within 30 days of receiving a proof of loss if liability is reasonably clear under one coverage to influence a settlement under another portion of the insurance policy or under another insurance policy;

(9) refusing to pay a claim solely based on an insured's request unless:

(a) the insured claims sovereign, eleemosynary, diplomatic, military service, or other immunity from suit or liability with respect to the claim; or

(b) the insured is granted the right under the policy to consent to settlement of a claim;

(10) advising a claimant not to obtain the services of an attorney or suggesting a claimant will receive less money if an attorney is used to pursue a claim or advise on the merits of a claim;

(11) misleading a claimant about applicable statutes of limitation;

(12) requiring an insured to sign a release that extends beyond the occurrence or cause of action that gave rise to a claim payment;

(13) deducting from a loss or claim payment made under one policy the premiums owed by the insured on another policy, unless the insured consents;

(14) failing to settle a first party claim on the basis that responsibility for payment of the claim should be assumed by others, except as provided by a policy provision;

(15) issuing a check or a draft in partial settlement of a loss or a claim under a specified coverage if the check or draft contains language that releases an insurer from total liability;

(16) refusing to provide a written basis for the denial of a claim upon demand of an insured;

(17) denying a claim for medical treatment after preauthorization is given, except in a case where an insurer obtains and provides to a claimant documentation of the pre-existing condition for which preauthorization was given or if a claimant is not eligible for coverage;

(18) refusing to pay a reasonably incurred expense to an insured if the expense resulted from a delay, prohibited by this rule, in a claim settlement or a claim payment;

(19) if an automobile insurer represents both a tortfeasor and a claimant:

(a) failing to advise a claimant under any coverage that the same insurance company represents both the tortfeasor and the claimant as soon as such information becomes known to the insurer; and

(b) allocating medical payments to the tortfeasor's liability coverage before exhausting a claimant's personal injury protection coverage;

(20) except for a failure to pay personal injury protection expenses when due, failing to pay interest at the legal rate, as provided in Title 15, Contracts and Obligations in General, on first party and third party claim amounts that are overdue under this rule; and

(21) failing to deliver or mail the amount owed on a first party or third party claim within 30 days after the insurer receives written proof of a covered loss and its amount, except:

(a) if the insurer does not receive written proof of the entire loss, the insurer shall deliver or mail a partial amount supported by written proof or investigation within 30 days; and

(b) a payment is not overdue if the insurer has reasonable evidence to dispute its responsibility for payment.

R590-190-10. Minimum Standards for Prompt, Fair, and Equitable Settlement.

(1) An insurer shall provide to a claimant a statement describing the time and way a claim shall be made and the type of proof of loss required by the insurer.

(2)(a) Within 30 days after receiving a complete proof of loss, an insurer shall complete its investigation of the claim and shall notify the first party claimant of its acceptance or denial of the claim unless the investigation cannot reasonably be completed within that time.

(b) If the insurer needs more time to determine whether the first party claim should be accepted or denied, it shall notify the first party claimant within 30 days after receipt of the proof of loss, giving the reasons more time is needed.

(c) If the investigation remains incomplete, the insurer shall, within 45 days after sending the initial notification and within every 45 days thereafter, send to the first party claimant a letter setting forth the reasons additional time is needed for the investigation, unless the first party claimant is represented by legal counsel or a public adjuster.

(d) Any basis for the denial of a claim shall be noted in the insurer's claim file and promptly communicated, in writing, to the first party claimant.

(e) An insurer is prohibited from denying a claim on the grounds of a specific provision, condition, or exclusion unless reference to the provision, condition, or exclusion is included in the denial.

(3)(a) If negotiations continue for settlement of a claim with a first party claimant or a third party claimant who is not represented by legal counsel or a public adjuster, an insurer shall notify the claimant of the date on which the applicable statute of limitation or other time limit expires.

(b) The notice shall be given at least 60 days before the expiration date.

(4) An insurer is prohibited from making a statement that the rights of a third party claimant may be impaired if a form or release is not completed within a given period, unless the statement is given to notify a third party claimant of a statute of limitation.

R590-190-11. Standards for Prompt, Fair, and Equitable Settlement for Automobile Insurance.

(1) If an automobile insurance policy provides for an adjustment and settlement of a total loss for a first party claimant based on actual cash value or replacement with another automobile of like kind and quality, one of the methods in this Subsection (1) shall apply.

(a)(i) An insurer may offer a replacement automobile that is comparable to the insured's automobile, with all applicable taxes, license fees, and transfer of ownership fees paid, at no cost, less any deductible provided in the policy; and

(ii) an offer and any rejection shall be documented in the claim file.

(b)(i) An insurer may offer a cash settlement based on the actual cost, less any deductible provided in the policy, to purchase a comparable automobile, including all applicable taxes, license fees, and transfer of ownership fees of a comparable automobile for a cost determined in this Subsection (1)(b)(i).

(A) The cost of at least two comparable automobiles in the local market area, if an automobile was available within the last 90 days to consumers in the local market area.

(B) The cost of at least two comparable automobiles in areas proximate to the local market area, including the closest major metropolitan area in or out of the state, that were available within the last 90 days to consumers, if comparable automobiles are not available in the local market area.

(C) At least two quotes from at least two qualified dealers located within the local market area, if a comparable automobile is not available in the local market area.

(D) Any source to determine a statistically valid fair market value that meets the following criteria:

(I) the source gives primary consideration to the value of vehicles in the local market area and may consider data on vehicles outside the area;

(II) the source produces value for at least 85% of the makes and models for the last 15 model years, taking into account the value of all major options for such vehicles; and

(III) the source produces fair market value based on current data available from the area surrounding the location where the insured vehicle was principally garaged or a necessary expansion of the parameters, such as time and area, to assure statistical validity.

(ii) An insurer shall reopen its claim file and comply with the following procedures upon notice that a first party claimant cannot purchase a comparable vehicle at market value within 30 days of receiving a cash settlement payment under this Subsection (1)(b); and

(A) locate a comparable vehicle by the same manufacturer, same year, similar body style, and similar options and price range for an insured for the market value determined by the insurer at the time of settlement available through a licensed dealer or private seller;

(B) either:

(I) pay the difference between market value before applicable deductions and the cost of the comparable vehicle of like kind and quality that the insured has located; or

(II) negotiate and effectuate the purchase of the vehicle for the insured;

(C) elect to offer a replacement under Subsection (1)(a); or

(D) conclude the loss settlement under the appraisal section of the policy in force at the time of the loss.

(iii) An insurer is not required to take action under Subsection (1)(b)(ii) if its documentation to the first party claimant, at the time of settlement, included written notification of the availability and location of a specified and comparable vehicle of the same manufacturer, same year, similar body style, and similar options in as good or better condition as the total loss vehicle that could be purchased for the market value determined by the insurer before applicable deductions.

(c) If a first party claimant automobile total loss is settled on a basis that deviates from the methods described in Subsection (1)(a) or (1)(b), the deviation shall be supported by documentation giving particulars of the automobile condition.

(i) Any deduction from the cost, including a deduction for salvage, shall be measurable, itemized, and specified as to dollar amount and shall be reasonable in amount.

(ii) The basis for the settlement shall be fully explained to the first party claimant.

(2)(a) A total loss settlement with a third party claimant shall be based on the market value or actual cost of a comparable automobile at the time of loss.

(b) Except for Subsection (1)(b)(ii), settlement procedures shall comply with Subsection (1)(b).

(3) Where liability and damages are reasonably clear, an insurer is prohibited from recommending that a third party claimant make a claim under the third party claimant's own policy solely to avoid paying a claim under the insurer's policy.

(4) An insurer is prohibited from requiring a claimant to travel an unreasonable distance to inspect a replacement automobile, to obtain a repair estimate, or to have an automobile repaired at a specific repair shop.

(5)(a) An insurer shall include a first party claimant's deductible, if any, in a subrogation demand initiated by an insurer.

(b) A subrogation recovery may be shared on a proportionate basis with a first party claimant if an agreement is reached for less than the full amount of the loss, unless the deductible amount has been otherwise recovered.

(c) A subrogation recovery shall be applied first to reimburse a first party claimant for the amount or share of the deductible if the full amount or share of the deductible has been recovered.

(d)(i) A deduction for expenses may not be made from the deductible recovery unless an outside attorney is retained to collect the recovery.

(ii) If taken, a deduction shall be a pro rata share of the allocated loss adjustment expense.

(e) If subrogation is initiated but discontinued, the insured shall be advised.

(6)(a) If an insurer prepares or approves an estimate for automobile repairs, the estimated cost shall reasonably be expected to repair the damage to the automobile.

(b) If an insurer prepares an estimate, it shall give a copy of the estimate to the claimant and may provide the claimant the names of one or more conveniently located repair shops.

(7) If the amount claimed is reduced due to betterment or depreciation, all information for the reduction shall be contained in the claim file.

(a) The deduction shall be itemized with specificity as to dollar amount and shall be reasonable.

(b) The insurer shall provide a written explanation of the deductions to the claimant upon request.

(8) If an insurer elects to repair an automobile and designates a specific repair shop for the repairs, the insurer shall cause the damaged automobile to be restored to its condition before the loss at no additional cost to the claimant other than as stated in the policy and within a reasonable period.

(9)(a) If coverage exists, payment shall be made to a claimant for:

(i) reasonably incurred cost of transportation; or

(ii) reasonably incurred rental cost of a substitute vehicle, including collision damage waiver, unless the claimant has physical damage coverage available.

(b) A payment under Subsection (9)(a) shall be made for:

(i) the period the automobile is necessarily withdrawn from service to obtain parts or effect repair; or

(ii) if the automobile is a total loss and the claim has been timely made, the period from the date of loss until a reasonable settlement offer has been made by the insurer.

(c) An insurer may not refuse to pay for loss of use for the period that an insurer is examining the claim or making other determinations as to the validity of the loss, unless the delay reveals that an insurer is not liable to pay the claim.

(d) A loss of use payment shall be an amount in addition to a payment for the value of an automobile.

[(9) If coverage exists, compensation for loss of use of a damaged vehicle shall be provided to a claimant:

(a)(i) Compensation for loss of use includes:

(A) the reasonable cost incurred of substitute transportation; and

(B) the cost of a collision damage waiver.

(ii) Subsection (9)(a)(i)(B) does not apply when the claimant has physical damage coverage available.

(iii) Subject to market availability, substitute transportation is transportation that may reasonably be used in a manner in which a claimant previously used the damaged vehicle.

(b) Compensation for loss of use shall cover the period in which the vehicle is necessarily withdrawn from service to obtain parts or effect repair.

(c) If the vehicle is a total loss, compensation for loss of use shall cover the period beginning on the date of loss and continuing until the insurer has made a reasonable settlement offer.

(d) Unless the insurer is not liable to pay the claim, an insurer may not refuse to provide compensation for loss of use for the period in which the insurer is determining the validity of a claim.

~~(e) An insurer may not require that a claimant rent a substitute vehicle at the claimant's expense and then seek reimbursement from the insurer.~~

~~(f) Compensation for loss of use shall be provided in addition to compensation for the value of the automobile.]~~

(10) An insurer shall fairly, equitably, and in good faith attempt to compensate a first party claimant for all losses covered by the policy based on the following standards:

(a) an offer of settlement may not be based solely on the useful life of the damaged part or vehicle;

(b) an estimate of the amount of compensation for a claimant shall include the actual wear and tear, or lack thereof, of the damaged part or vehicle;

(c) actual cash value shall consider the cost of replacement of the part or vehicle for which compensation is claimed;

(d) an actual estimate of the true useful life remaining in the part or vehicle shall be considered in establishing the amount of compensation of a claim; and

(e) actual cash value shall include taxes and other fees incurred by a claimant in replacing the part or vehicle or in compensating the claimant for the loss incurred.

(11) An insurer may not demand reimbursement of a personal injury protection payment from a first party claimant from a settlement or judgment against a third party, except as provided by law.

(12)(a) An insurer shall provide reasonable written notice to a claimant before termination of payment for automobile storage charges and claim documentation of the denial.

(b) An insurer shall provide a reasonable time for the claimant to remove the vehicle from storage before terminating a payment.

R590-190-12. Unfair Claim Settlement Practices for Automobile Insurance.

The commissioner finds the following acts to be misleading, deceptive, unfairly discriminatory, overreaching, or an unreasonable restraint on competition in settling a claim:

(1) settling a claim for an amount that is less than the amount the insurer would be charged if repairs were made, unless the amount is agreed to by the claimant or provided for by the policy;

(2) refusing to settle a claim based solely upon a police agency issuing or failing to issue a traffic citation;

(3) failing to disclose all coverages for which an application for benefits is required by the insurer;

(4) failing to disclose all coverages, including loss of use, household services, and any other coverages available to the claimant;

(5) requiring a claimant to use only the insurer's claim service to perfect a claim;

(6) failing to provide to a claimant, if requested, the name and address of the salvage dealer who provided a salvage quote for the amount deducted by an insurer in a total loss settlement;

(7) refusing to disclose policy limits if requested by a claimant;

(8) using a release on the back of a check or draft that requires a claimant to release an insurer from an obligation on further claims to process a current claim if an insurer knows or reasonably should know that there may be future liability on the part of the insurer;

(9) refusing to use a separate release of claim document, rather than one on the back of a check or draft, if requested to do so by a claimant;

(10) intentionally offering less money to a first party claimant than the claim is reasonably worth;

(11) refusing to offer to pay a claim based on comparative negligence without a reasonable basis for doing so; and

(12) imputing the negligence of a permissive user of a vehicle to the owner of the vehicle in a bailment situation.

R590-190-13. Standards for Prompt, Fair, and Equitable Settlement for Fire and Extended Coverage Type Policies with Replacement Cost Coverage.

(1)(a) If a policy provides for the adjustment and settlement of first party losses based on replacement cost, the following apply:

(i) if a loss requires repair or replacement of an item or part, any significant physical damage incurred in making such repair or replacement not otherwise excluded by the policy shall be included in the loss; and

(ii) if a loss requires repair or replacement of items and the repaired or replaced items do not match in color, texture, or size, the insurer shall repair or replace items to conform to a reasonably uniform appearance for both interior and exterior losses.

(b) For a settlement described in Subsection (1)(a), an insured is only responsible for the applicable deductible.

(2)(a)(i) If a policy provides for an adjustment and settlement of loss on an actual cash value basis on residential fire and extended coverage, an insurer shall determine actual cash value as the replacement cost of property at the time of the loss less depreciation, if any.

(ii) Upon an insured's request, an insurer shall provide a copy of any relevant documentation from the claim file detailing each deduction for depreciation.

(b)(i) If an insured's interest is limited because the property has nominal or no economic value, or a value disproportionate to replacement cost less depreciation, the determination of actual cash value is not required.

(ii) In a case described in Subsection (2)(b)(i), an insurer shall provide, upon the insured's request, a written explanation of the basis for limiting the amount of recovery along with the amount payable under the policy.

R590-190-14. Severability.

If any provision of this rule, Rule R590-190, or its application to any person or situation is held invalid, such invalidity does not affect any other provision or application of this rule that can be given effect without the invalid provision or application. The remainder of this rule shall be given effect without the invalid provision or application.

KEY: insurance law

Date of Last Change: 2024[2023]

Notice of Continuation: April 3, 2019

Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-26-301; 31A-26-303; 31A-21-312; 31A-2-308

End of the Notices of Changes in Proposed Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the agency is required to review the rule. This review is intended to help the agency determine, and to notify the public, that the administrative rule in force is still authorized by statute and necessary. Upon reviewing a rule, an agency may: repeal the rule by filing a **PROPOSED RULE**; continue the rule as it is by filing a **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (REVIEW)**; or amend the rule by filing a **PROPOSED RULE** and by filing a **REVIEW**. By filing a **REVIEW**, the agency indicates that the rule is still necessary.

A **REVIEW** is not followed by the rule text. The rule text that is being continued may be found in the online edition of the *Utah Administrative Code* available at adminrules.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.

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R277-927	Filing ID: 55292
Effective Date:	11/16/2023	

Agency Information

1. Department:	Education	
Agency:	Administration	
Building:	Board of Education	
Street address:	250 E 500 S	
City, state and zip:	Salt Lake City, UT 84111	
Mailing address:	PO Box 144200	
City, state and zip:	Salt Lake City, UT 84114-4200	
Contact persons:		
Name:	Phone:	Email:
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov

Please address questions regarding information on this notice to the persons listed above.

General Information

2. Rule catchline:
R277-927. Teacher and Student Success Act (TSSA) Program
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

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

Section 53F-2-416, which requires the Board to calculate and distribute student and teacher success program money to LEAs; Section 53G-7-1304, which requires the Board to make rules for a Local Education Agency (LEA) governing board to calculate and distribute a school's allocation of program money for each school within the LEA; and Section 53G-7-1306, which require the Board to determine:

(i) a threshold of points under the statewide school accountability system that designates a school as succeeding in school performance and student academic achievement; and

(ii) performance standards for certain schools.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

There were no public comments received.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule is necessary because it sets standards for the Board's distribution of student and teacher success program money to LEAs; standards governing an LEA's distribution of student and teacher success program money to each school within the LEA; and establishes certain accountability standards related to the student and teacher success program. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	11/16/2023
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R357-3	Filing ID:	55107
Effective Date:	11/30/2023		

Agency Information

1. Department:	Governor		
Agency:	Economic Opportunity		
Room number:	Suite 300		
Building:	World Trade Center		
Street address:	60 E South Temple		
City, state and zip:	Salt Lake City, UT 84111		
Contact persons:			
Name:	Phone:	Email:	
Dane Ishihara	801-792-8764	dishihara@utah.gov	
Please address questions regarding information on this notice to the persons listed above.			

General Information

2. Rule catchline:
R357-3. Economic Development Tax Increment Financing Rule
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Section 63N-2-110 allows the office to make rules outlining the administration of the Economic Development Tax Increment Financing program.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No comments have been received.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule is authorized by state law. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Ryan Stark, Executive Director	Date:	11/30/2023
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R523-17	Filing ID:	51271
Effective Date:	11/22/2023		

Agency Information

1. Department:	Health and Human Services	
Agency:	Substance Abuse and Mental Health	
Building:	Cannon Health Building	
Street address:	288 N 1460 W	
City, state and zip:	Salt Lake City, UT 84116	
Contact persons:		
Name:	Phone:	Email:
Thomas Dunford	801-538-4181	tdunford@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule catchline:
R523-17. Behavioral Health Crisis Response Systems Standards
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule is authorized under Subsection 26B-5-610(3).
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No comments have been received by the Department of Health and Human Services (DHHS) concerning this rule after being made effective.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule is statutorily mandated by the legislature. Therefore, this rule should be continued.
Following the consolidation and recodification of DHHS statute in the 2023 General Session, an amendment to this rule is being filed concurrently with this five-year review to update statutory citations and align this rule with the standards of the Rulewriting Manual for Utah.

Agency Authorization Information

Agency head or designee and title:	Tracy S. Gruber, Executive Director	Date:	11/19/2023
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R523-18	Filing ID:	51261
Effective Date:	11/22/2023		

Agency Information

1. Department:	Health and Human Services		
Agency:	Substance Abuse and Mental Health		
Building:	Cannon Health Building		
Street address:	288 N 1460 W		
City, state and zip:	Salt Lake City, UT 84116		
Contact persons:			
Name:	Phone:	Email:	
Thomas Dunford	801-538-4181	tdunford@utah.gov	
Please address questions regarding information on this notice to the persons listed above.			

General Information

2. Rule catchline:
R523-18. Mobile Crisis Outreach Teams Certification Standards
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule is authorized under Subsections 26B-5-112(5) and 26b-5-112.5(5), and Section 26B-5-609.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No comments have been received by the Department of Health and Human Services (DHHS) concerning this rule since being made effective.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule is statutorily mandated by the legislature. Therefore, this rule should be continued.
Following the consolidation and recodification of the DHHS statute in the 2023 General Session, an amendment to this rule is being filed concurrently with this

five-year review to update statutory citations and align this rule with the standards of the Rulewriting Manual for Utah.

Agency Authorization Information

Agency head or designee and title:	Tracy S. Gruber, Executive Director	Date:	11/19/2023
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R523-19	Filing ID:	51263
Effective Date:	11/22/2023		

Agency Information

1. Department:	Health and Human Services	
Agency:	Substance Abuse and Mental Health	
Building:	Cannon Health Building	
Street address:	288 N 1460 W	
City, state and zip:	Salt Lake City, UT 84116	
Contact persons:		
Name:	Phone:	Email:
Thomas Dunford	801-538-4181	tdunford@utah.gov
Jonah Shaw	801-538-4219	jshaw@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule catchline:
R523-19. Community Mental Health Crisis and Suicide Prevention Training Grant Standards
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule is authorized under Section 26B-5-111.
An amendment to this rule is being filed concurrently with this five-year review to update statutory citations and align this rule with the standards of the Rulewriting Manual for Utah.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No comments have been received by the Department of Health and Human Services concerning this rule since being made effective.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule is essential as it establishes requirements and a process for communities to qualify for a grant that will allow them to provide specific training on mental health crises and suicide prevention. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Tracy S. Gruber, Executive Director	Date:	11/19/2023
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R527-38	Filing ID:	54109
Effective Date:	11/20/2023		

Agency Information

1. Department:	Health and Human Services	
Agency:	Recovery Services	
Building:	TSOB	
Street address:	4315 S 2700 W	
City, state and zip:	Taylorsville, UT 84129	
Mailing address:	PO Box 45033	
City, state and zip:	Salt Lake City, UT 84145-0033	
Contact persons:		
Name:	Phone:	Email:
Jodi Witte	801-741-7417	jwitte@utah.gov
Casey Cole	801-741-7523	cacole@utah.gov
Jordan Miera	801-538-4171	jmiera@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule catchline:
R527-38. Unenforceable Cases
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

Sections 26B-1-202 and 26b-9-108 give the Office of Recovery Services (ORS) the authority to adopt, amend, and enforce rules necessary to carry out its responsibilities under state law.

Federal Regulations at 45 CFR 303.11 provide detailed case closure criteria for IV-D agencies. This criteria has been adopted by ORS and incorporated by reference into this rule.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

There have been no comments received since the last five-year review of this rule.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

The clarifications and procedures provided in this rule are necessary for the appropriate implementation of federal regulations, which are still in effect and do not appear in state statute. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Tracy S. Gruber, Executive Director	Date:	11/19/2023
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R746-350	Filing ID:	51972
Effective Date:	11/30/2023		

Agency Information

1. Department:	Public Service Commission	
Agency:	Administration	
Building:	Heber M. Wells Building	
Street address:	160 E 300 S, 4th Floor	
City, state and zip:	Salt Lake City, UT 84111	
Mailing address:	PO Box 4558	
City, state and zip:	Salt Lake City, UT 84114-4558	
Contact persons:		
Name:	Phone:	Email:
John Delaney	801-530-6724	jdelaney@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule catchline:
R746-350. Application to Discontinue Telecommunications Service
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Section 54-4-1 grants the Public Service Commission (PSC) the power to regulate and supervise all the business of every public utility in Utah.
Section 54-3-1 requires that all charges made, demanded, or received by a public utility, or by any two or more public utilities, for any product or commodity furnished or to be furnished, or for any service rendered or to be rendered, shall be just and reasonable.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
The PSC has received no written comments from any interested person supporting or opposing this rule since the last five-year review.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule is necessary so that the PSC may require telecommunications companies to provide notice of their intent to curtail services or exit the market. This rule provides the steps telecommunications companies must take to inform the PSC, customers, other telecommunication carriers, and the general public, of changes in their operations in Utah's telecommunications and services market. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Thad LeVar, PSC Chair	Date:	11/30/2023
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R895-9	Filing ID:	53732
Effective Date:	11/28/2023		

Agency Information

1. Department:	Government Operations	
Agency:	Technology Services	
Street address:	4315 S 2700 W	
City, state and zip:	Taylorsville, UT 84129	
Contact persons:		
Name:	Phone:	Email:
Stephanie Weteling	435-720-5315	stephanie@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule catchline:
R895-9. Utah Geographic Information Systems Advisory Council
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule is issued by the Chief Information Officer under the authority of Section 63A-16-205 of the Technology Governance Act and Section 63G-3-201 of the Utah Rulemaking Act.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No written comments have been received during and since the last five-year review of this rule from interested persons supporting or opposing this rule.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule is needed to establish an advisory council to coordinate statewide geographic information systems data efforts for collection, creation, and access, and to mutual collaboration by state entities. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Marvin Dodge, Executive Director	Date:	11/28/2023
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End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF FIVE-YEAR REVIEW EXTENSIONS

Rulewriting agencies are required by law to review each of their administrative rules within five years of the date of the rule's original enactment or the date of last review (Section 63G-3-305). If the agency finds that it will not meet the deadline for review of the rule (the five-year anniversary date), it may file a **NOTICE OF FIVE-YEAR REVIEW EXTENSION (EXTENSION)** with the Office of Administrative Rules. The **EXTENSION** permits the agency to file the review up to 120 days beyond the anniversary date.

Agencies have filed **EXTENSIONS** for the rules listed below. The "Extended Due Date" is 120 days after the anniversary date.

EXTENSIONS are governed by Subsection 63G-3-305(6).

NOTICE OF FIVE-YEAR REVIEW EXTENSION		
Rule Number:	R392-101	Filing ID: 54412
New Deadline Date:	04/10/2024	

Agency Information

1. Department:	Health and Human Services	
Agency:	Population Health, Environmental Health	
Room number:	Second Floor	
Building:	Cannon Health Building	
Street address:	288 N 1460 W	
City, state and zip:	Sat Lake City, UT 84116	
Mailing address:	PO Box 142104	
City, state and zip:	Salt Lake City, UT 84114-2102	
Contact persons:		
Name:	Phone:	Email:
Karl Hartman	801-538-6191	kartman@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule catchline:
R392-101. Food Safety Manager Certification
3. Reason for requesting the extension:
The Department of Health and Human Services (Department) recently submitted this rule to the Office of Administrative Rules (OAR) for nonsubstantive changes. This rule is currently under codification review by OAR.

The Department is waiting for the newly codified rule to be published before submitting the five-year review.

Agency Authorization Information

Agency head or designee and title:	Heather Borski, Deputy Director	Date:	12/01/2023
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NOTICE OF FIVE-YEAR REVIEW EXTENSION

Rule Number:	R452-100	Filing ID: 54458
New Deadline Date:	04/18/2024	

Agency Information

1. Department:	Cultural and Community Engagement	
Agency:	Arts and Museums, Museum Services	
Street address:	3760 S Highland Drive	
City, state and zip:	Millcreek, UT 84106	
Contact persons:		
Name:	Phone:	Email:
Kristin Mead	218-393-2995	kristinmead@utah.gov
Sophia Riggs	801-874-7205	sophiariggs@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule catchline:
R452-100. Certified Local Museum Designation
3. Reason for requesting the extension:

NOTICES OF FIVE-YEAR REVIEW EXTENSIONS

The Division of Arts and Museums will be repealing this rule as the practice of Certifying Local Museums was discontinued and removed from statute, Subsection 9-6-603(8), in 2020.

This extension ensures this rule will have time to make it through the entire repeal process and will not expire on 12/20/2023.

(EDITOR'S NOTE: The proposed repeal of Rule R452-100 is under ID 56237 in this issue, December 15, 2023, of the Bulletin.)

Agency Authorization Information

Agency head or designee and title:	Jill Love, Executive Director	Date:	11/29/2023
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End of the Notices of Five-Year Review Extensions 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.

Agriculture and Food

Conservation Commission

No. 55840 (Repeal and Reenact) R64-4: Agricultural Water Optimization Program
Published: 10/15/2023
Effective: 11/21/2023

Commerce

Consumer Protection

No. 55843 (Amendment) R152-21: Credit Services Organizations Act Rule
Published: 11/01/2023
Effective: 12/08/2023

Professional Licensing

No. 55847 (Amendment) R156-46a: Hearing Instrument Specialist Licensing Act Rule
Published: 11/01/2023
Effective: 12/11/2023

No. 55846 (Amendment) R156-69: Dentist and Dental Hygienist Practice Act Rule
Published: 11/01/2023
Effective: 12/11/2023

Crime Victim Reparations

Administration

No. 55794 (Amendment) R270-1: Relocation, Funeral and MH payment updates
Published: 11/01/2023
Effective: 12/08/2023

Education

Administration

No. 55852 (Amendment) R277-113: LEA Fiscal and Auditing Policies
Published: 11/01/2023
Effective: 12/11/2023

No. 55853 (Amendment) R277-326: Early Learning
Published: 11/01/2023
Effective: 12/11/2023

No. 55854 (Amendment) R277-495: Electronic Devices in Public Schools
Published: 11/01/2023
Effective: 12/11/2023

No. 55855 (Amendment) R277-553: Charter School Oversight, Monitoring and Appeals
Published: 11/01/2023
Effective: 12/11/2023

No. 55856 (Amendment) R277-604: Private School, Home School, and Bureau of Indian Education (BIE) Student Participation in Public School Achievement Tests
Published: 11/01/2023
Effective: 12/11/2023

Government Operations

Finance

No. 55718 (Amendment) R25-5: Payment of Meeting Compensation (Per Diem) to Boards
Published: 10/15/2023
Effective: 12/06/2023

Governor

Economic Opportunity

No. 55838 (Amendment) R357-29: Rural County Grant Rule
Published: 10/15/2023
Effective: 11/29/2023

No. 55839 (New Rule) R357-46: Rural Communities Opportunity Grant Rule
Published: 10/15/2023
Effective: 11/29/2023

NOTICES OF RULE EFFECTIVE DATES

Health and Human Services

Administration

No. 55664 (Repeal and Reenact) R380-300: Employee Background Screening
Published: 09/15/2023
Effective: 11/20/2023

Integrated Healthcare

No. 55527 (Amendment) R414-505: Participation in the Nursing Facility Non-State Government-Owned Upper Payment Limit Program
Published: 08/01/2023
Effective: 11/20/2023

Insurance

Administration

No. 55805 (Repeal and Reenact) R590-206: Privacy of Consumer Financial and Health Information Rule
Published: 10/15/2023
Effective: 11/21/2023

No. 55806 (Repeal) R590-210: Privacy of Consumer Information Exemption for Manufacturer Warranties and Service Contracts
Published: 10/15/2023
Effective: 11/21/2023

No. 55807 (Amendment) R590-223: Rule to Recognize the 2001 CSO Mortality Table for Use in Determining Minimum Reserve Liabilities and Nonforfeiture Benefits
Published: 10/15/2023
Effective: 11/21/2023

No. 55861 (Amendment) R590-230: Suitability in Annuity Transactions
Published: 11/01/2023
Effective: 12/08/2023

No. 55808 (Amendment) R590-240: Procedure to Obtain Exemption of Student Health Programs From Insurance Code
Published: 10/15/2023
Effective: 11/21/2023

No. 55809 (Amendment) R590-242: Military Sales Practices
Published: 10/15/2023
Effective: 11/21/2023

No. 55810 (Amendment) R590-259: Dependent Coverage to Age 26
Published: 10/15/2023
Effective: 11/21/2023

Natural Resources

Wildlife Resources

No. 55821 (Amendment) R657-13: Taking Fish and Crayfish
Published: 10/15/2023
Effective: 11/21/2023

No. 55822 (Repeal) R657-59: Private Fish Ponds, Short Term Fishing Events, Private Fish Stocking, and Institutional Aquaculture
Published: 10/15/2023
Effective: 11/21/2023

No. 55823 (New Rule) R657-59a: Private Fish Ponds
Published: 10/15/2023
Effective: 11/21/2023

No. 55824 (New Rule) R657-59b: Short Term Fishing Events
Published: 10/15/2023
Effective: 11/21/2023

No. 55825 (New Rule) R657-59c: Aquaponics
Published: 10/15/2023
Effective: 11/21/2023

No. 55826 (New Rule) R657-59d: Institutional Aquaculture
Published: 10/15/2023
Effective: 11/21/2023

No. 55827 (New Rule) R657-59e: Stocking into Natural Lakes, Natural Flowing Streams, or Reservoirs on Natural Stream Channels
Published: 10/15/2023
Effective: 11/21/2023

Public Safety

Administration

No. 55811 (New Rule) R698-12: Fallen Officer Memorial Scholarship Program
Published: 10/15/2023
Effective: 11/21/2023

Driver License

No. 55800 (Repeal and Reenact) R708-7: Functional Ability In Driving: Guidelines for Physicians
Published: 10/15/2023
Effective: 11/21/2023

No. 55813 (Amendment) R708-14: Adjudicative Proceedings for Driver License Actions Involving Alcohol and Drugs
Published: 10/15/2023
Effective: 11/21/2023

No. 55815 (Amendment) R708-35: Adjudicative Proceedings For Driver License Offenses Not Involving Alcohol or Drug Actions
Published: 10/15/2023
Effective: 11/21/2023

No. 55802 (Amendment) R708-41: Requirements for Acceptable Documentation, Storage and Maintenance
Published: 10/15/2023
Effective: 11/21/2023

No. 55804 (Amendment) R708-46: Refugee, Asylee, or Covered Humanitarian Parolee Knowledge Test in Applicant's Native Language
Published: 10/15/2023
Effective: 11/21/2023

Highway Patrol
No. 55812 (New Rule) R714-561: Suicide Deterrence Grant Program
Published: 10/15/2023
Effective: 11/21/2023

Transportation

Operations, Traffic and Safety
No. 55796 (Amendment) R920-4: Special Road Use or Event
Published: 10/15/2023
Effective: 11/21/2023

Transportation Commission

Administration
No. 55798 (Amendment) R940-4: Airports of Regional Significance
Published: 10/15/2023
Effective: 11/21/2023

No. 55799 (New Rule) R940-10: Guidelines for Department Participation in Transportation Reinvestment Zones
Published: 10/15/2023
Effective: 11/21/2023

End of the Notices of Rule Effective Dates Section

